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10 Years of LASPO Special Bulletin



Executive Summary

Welcome to this bonus edition of the LAA statistics bulletin, for the tenth anniversary of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). With a general election on the horizon and political parties fine-tuning their manifestos, this bulletin will take a look at the changes to the legal landscape and their impact on clients and the profession.

Traditionally, the tenth wedding anniversary is commemorated with tin. Not the most inspiring of gifts perhaps, and not dissimilar to the legal aid system in 2023, as it is bright and shiny but can be cut with little effort. And indeed, it's much the same as the Tin Man from 'The Wizard of Oz', standing in the middle of the forest, axe in hand, unable to move forward because he doesn't work and is rusted in place.

We ordinarily write this bulletin to analyse the LAA's quarterly statistics with some commentary about the sector and the system, together with any policy updates that we feel shed a light. This edition will feel a little different, as we take a brief look at some of the figures that we have seen over the past decade. Our usual quarterly statistics bulletin will follow later this week for you to enjoy over the Easter break.

The last ten years

At some point in our lives, all of us will be involved with the law. For the fortunate, these brushes will be non-contentious (buying a home or getting married) or relatively minor (a consumer dispute perhaps). Many issues will be easy to resolve, but others are more complicated and have the potential to be life-changing. As Professor Jo Delahunty QC

remarked to the Westminster Commission, there could be a knock at the door for any one of us at any time.

These issues are unlikely to make headlines. Often, they may not appear significant, but each will have profound consequences for the individuals involved and require specialist help to negotiate. Whether they occur once in a lifetime, or on a more regular basis, each and every one of us must hope that if we need to, we can call on someone with the skill and expertise to fight on our behalf. While some are in a position to pay privately for legal advice, many are not and will be reliant on legal aid and other forms of free legal services to access the advice and assistance they need.

To many, legal aid is a funding mechanism, a means for the state to pay for a service for a family to obtain advice about staying in their home, or a survivor of abuse getting representation in court against their abuser. Legal Aid can help a child with additional needs to access support and an education, or a vulnerable patient access the right level of care. The legal aid sector is an essential part of our high streets, often firms and organisations are small businesses, employing local people and supporting local communities.

LASPO came into force on 1 April 2013 and cut large areas from the scope of legal aid overnight. Individuals could no longer get help with many private family, employment, housing and debt problems and many practitioners saw the shape of their businesses change beyond all recognition. The number of legal aid cases to help people get the early advice they need dropped from almost 1,000,000 in 2009/10 to just 130,000 in 2021/22.

Over the same period of time, the number of people having to go to court without representation trebled. The number of advice agencies and law centres doing this work has fallen by 59%. Law centres and legal aid firms closed down and firms were forced to close their legal aid departments - resulting in advice deserts spreading across the country (see The Law Society's heat maps below).

In February 2019, the government announced a review of the means test for legal aid as part of the Legal Support Action Plan. Prior to that, the legal aid means test had not been updated in line with inflation since 2009 – since then, the Bank of England measures that prices have risen by 47%. Since the review, the Ministry of Justice (MoJ) has consulted with the sector with the intention of expanding who is eligible for legal aid. Headlines have reported that an extra 2 million people will be eligible for civil legal aid, and 3.5 million more people will be eligible for support at the Magistrates' court. The proposals have been welcomed and a final report is expected shortly, but clients will only see the benefits of these changes if there is significant investment in the legal aid sector and there are practitioners available to undertake the work.

To mark the ten year anniversary of LASPO, The Law Society published revised versions of their heat maps showing the number of housing, community care, criminal duty solicitors, education, and immigration providers across England and Wales.

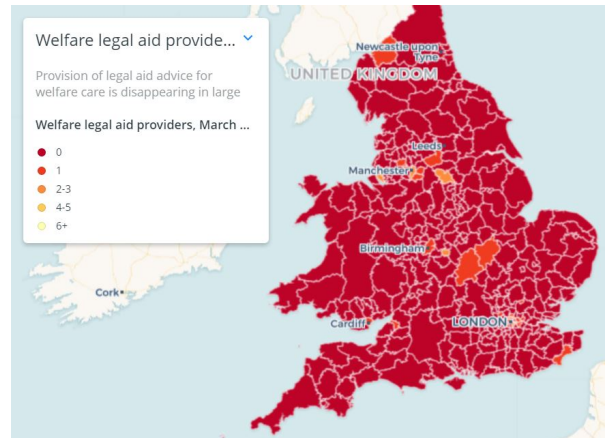
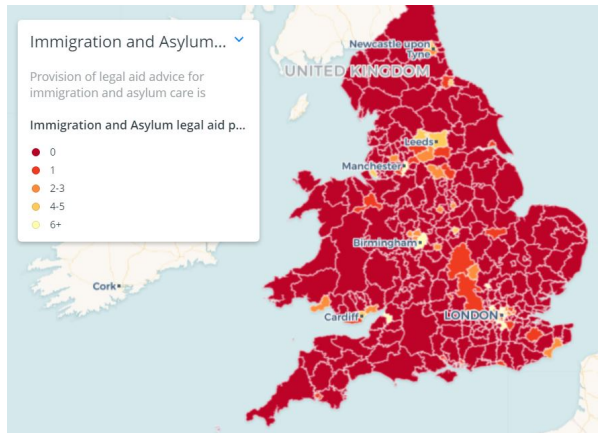
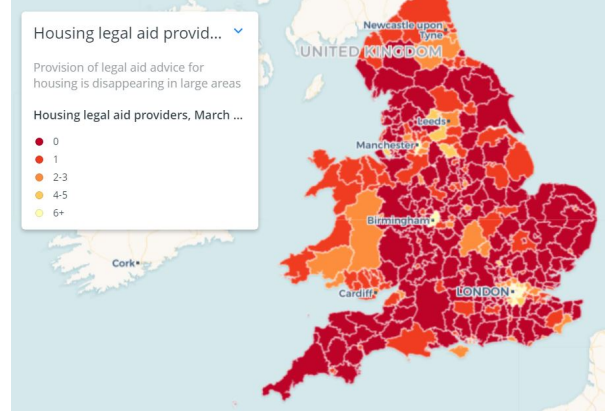
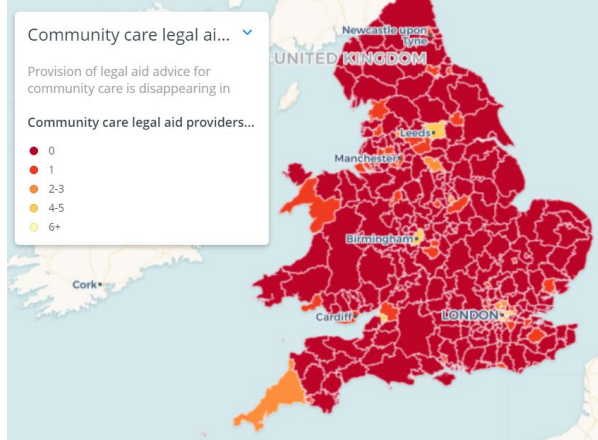
You can click on each of these maps to be redirected to the Law Society's interactive maps on their website. Otherwise, click here:

Community care – [available here](#)

Housing – [available here](#)

Immigration and asylum – [available here](#)

Welfare Benefits – [available here](#)

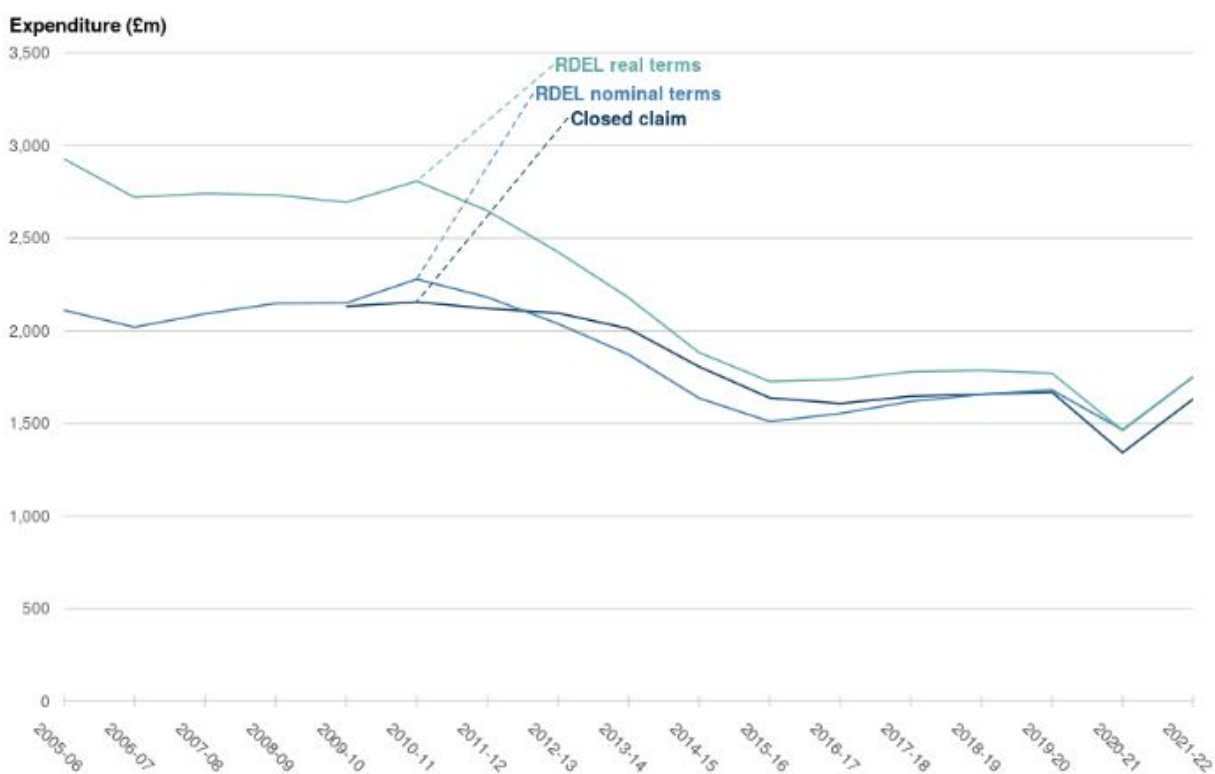


The future isn't bright. It's very, very red. Some further numbers in relation to the cuts:

In 2012/2013, the year prior to LASPO's introduction, the government spent £1.125b on civil legal aid out of a total legal aid scheme spend of £2.426b (which included criminal legal aid and the administrative costs of running the system). By 2014/2015 civil legal aid spend was £788m, a reduction of £337m. In the nine years that followed, if the keen mathematicians amongst you were to add together all of those reductions in legal aid spend, it would come to £2.922b on civil legal aid, and £5.758b if you were to look at the legal aid scheme in its entirety.

Figure 1: Overall annual legal aid expenditure, by closed-case and RDEL nominal and real terms measures (£m), 2005-06 to 2021-22

(see interactive breakdown [here](#))



LASPO achieved this primarily by removing large areas of civil legal aid from scope. What remains is this:

Scope of Legal Aid

Pre-LASPO

Prior to April 2013 the availability of legal aid set out in the Access to Justice Act 1999 which provided that legal aid was available for any matter of English/Welsh law unless specifically excluded by Schedule 2 of the Act. Excluded matters were:^[1]

[1] Access to Justice Act 1999, Schedule 2 (1)(a)-(h)

- | | |
|--|----------------------|
| (a) Personal injury other than clinical negligence | (e) Trust law |
| (b) Conveyancing | (f) Defamation |
| (c) Boundary disputes | (g) Company law |
| (d) Wills | (h) Business matters |

Post-LASPO

LASPO reversed the position of the Access to Justice Act and specified that legal aid is not available for any matter unless specifically included in Schedule 1^[1] of the Act. Criminal law remains effectively entirely in scope albeit subject to stringent means and merits test. The scope of civil legal aid was drastically cut with remaining areas often subject to further restrictions as well as tightened needs and merits tests. Included matters are:^[2]

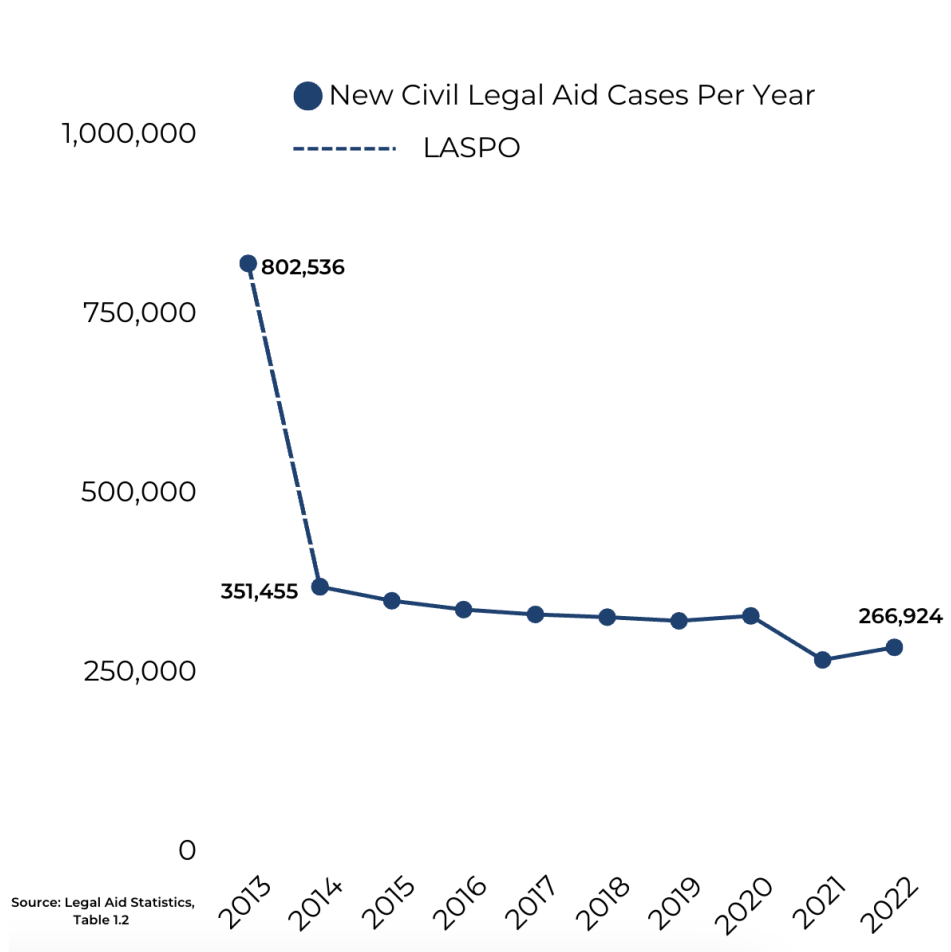
[1] Legal Aid Sentencing and Punishment of Offenders Act 2012, Schedule 1 (1)-(46)

[2] Comprehensive and accessible guidance on scope can be found in: Law Works, 'Legal Aid:What's in scope?', (Law Works, July 2018) < <https://www.lawworks.org.uk/sites/default/files/files/lw-cr-legal-aid-scope.pdf>> Accessed 19.5.2021 (NB. References in the guidance to mandatory use of telephone gateway advice are now obsolete, having been phased out on 15 May 2020.)

<u>Area</u>	<u>Restrictions</u>
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 with 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	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.
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. ^[1]
Asylum & 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 & capacity	Only in relation to the Mental Health Act 1983, Mental Capacity Act 2005 and para 5(2) of the Schedule to the Repatriation of Prisoners Act 1984.
Miscellaneous	Only for specific areas covered in sch1, such as: proceeds of crime, environmental pollution, gang and anti-social behaviour injunctions and non-family / housing relationship-based harassment cases.

[1] Following judicial review brought by the Children's Society and introduced The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid for Separated Children) (Miscellaneous Amendments) Order 2019 SI No 1396



Assessing the Legal Aid, Sentencing and

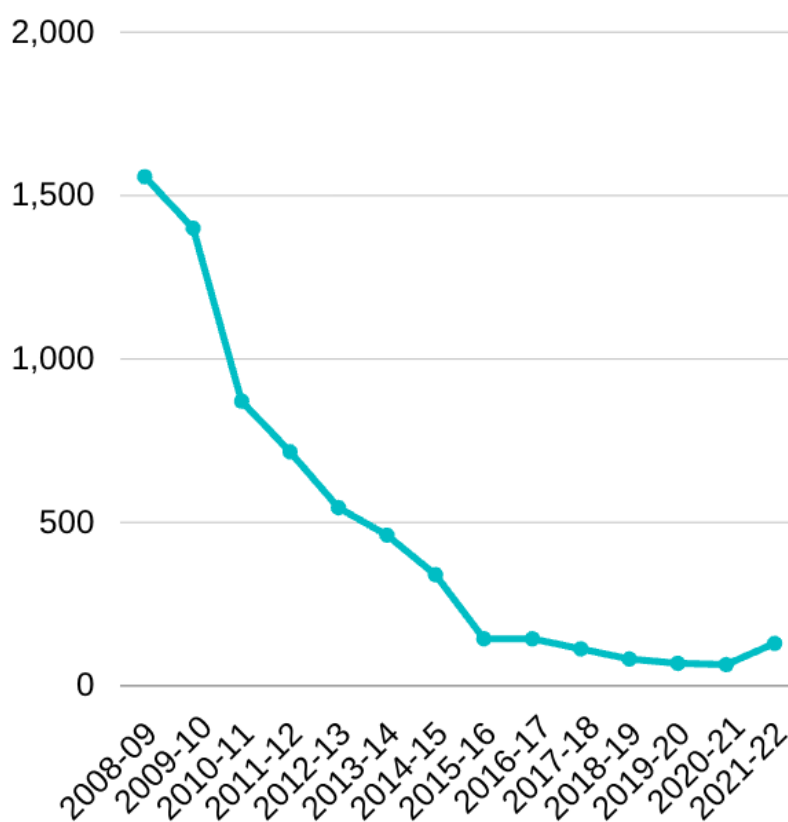
Punishment of Offenders Act 2012

One of the government's objectives for introducing LASPO was to make 'significant savings to the cost of the legal aid scheme'. By this measure, LASPO has been an unqualified success. Other aims, however, were to 'discourage unnecessary and adversarial litigation at public expense', 'target legal aid at those who need it most' and to 'deliver better overall value for money for the taxpayer.'

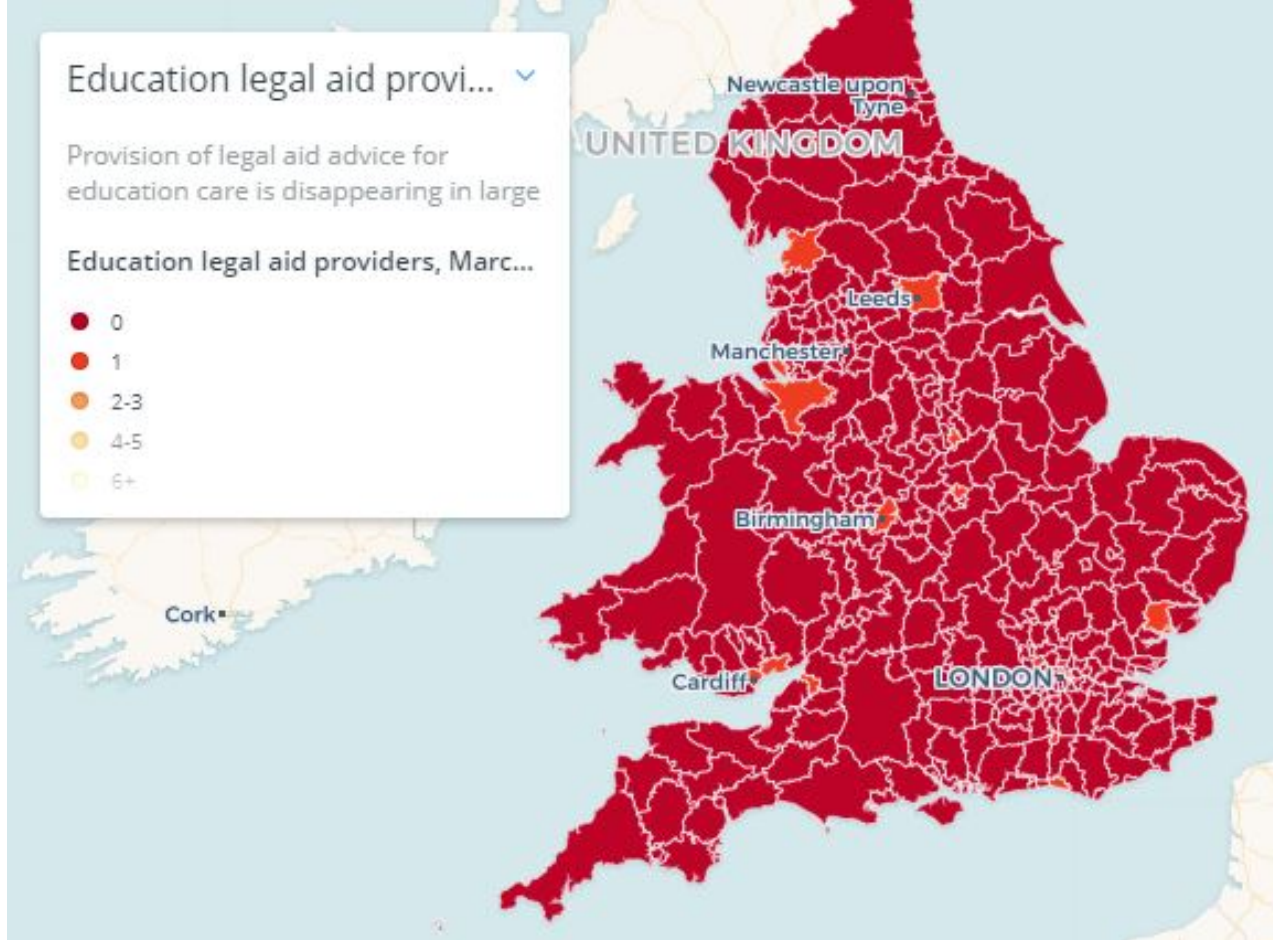
Between 2011-12 and 2013-14, the number of new legal aid matters started dropped from 679,768 to 173,660. In the decade since, it has dropped to 127,782 for the year 2021-22, going as low as 117,209 during the pandemic. In total over the course of the decade the number of people helped has dropped by some 4.5 million clients. Each of those numbers represents an individual with a legal problem who wasn't assisted. Some may have entered the court system without advice or representation. Some may have paid privately for assistance or sought help from religious communities, some may have approached their local MP, or sought assistance online. However many will have found no resolution to their problem at all.

Again, let's look at some of those numbers in further detail. LASPO removed school exclusion from the scope of legal aid. The UK has a prison population of about 80,000. 58% of young adults currently in prison were permanently excluded at school with Roma, Traveller, Black and SEN children being disproportionately represented. This wasn't a particularly expensive area of policy. In 2008-09 the LAA's spend on legal aid representation for education (that's Special Education Needs and exclusion) was just £1.6m for the whole of England and Wales. In 2017-18 it was £113k. Only 12 education law providers in England and Wales still have a legal aid contract. This may well save money directly on the legal aid bill, but does it help those in most need or provide value for the taxpayer when costs are just shifted to other government departments?

Value (£'000) of legal aid spend on education from 2008 to 2022



Source: Legal Aid Statistics Oct-Dec 2022, Gov.uk, 2023

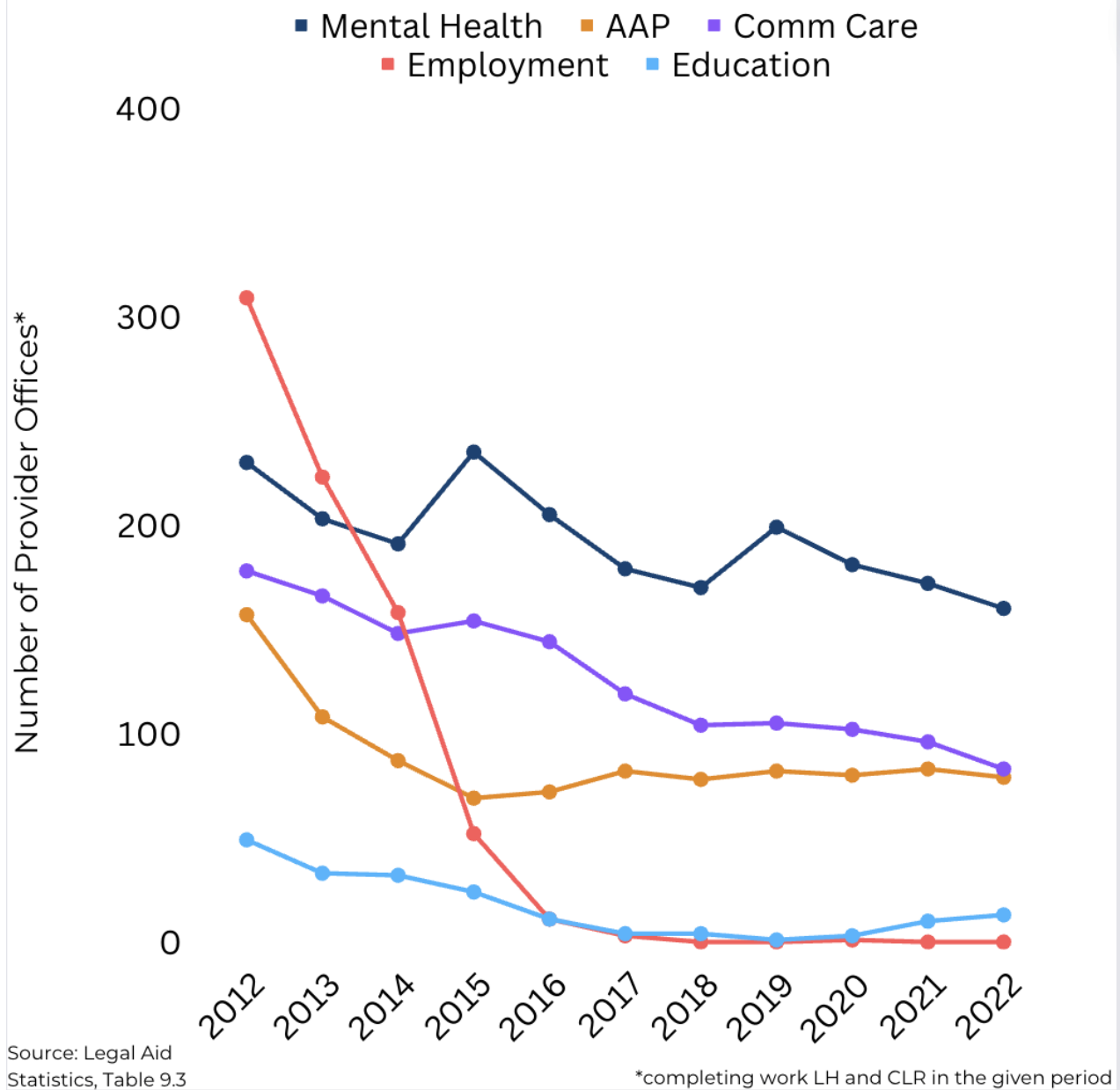


Interactive map of education provision – [available here](#)

Divorce is widely recognised to be the most stressful experience for a family. Yet many families go through this with no external advice or assistance. LASPO removed private family law from the scope of legal aid and made it much harder for survivors of domestic abuse to access the legal help that they need. 69% of survivors wanted legal support or advice for the family court. Only 34% of those who wanted legal support were able to get it. **Only 29% of victims and survivors could get help for their children[1].**

The means test still exists for cases of domestic abuse and many of these survivors were locked out of legal aid by the means test and 'gateway evidence requirements.' This results in so much trauma that could be avoided and repercussions in terms of health, educational attainment and criminal rates further down the line.

Another area of real concern the housing sector. In the past decade and since the Grenfell tragedy, there have been strides forward made in this area. We note in particular the Homes (Fitness for Human Habitation) Act 2018. Yet there remains a disrepair crisis in the rental sector, acknowledged in the recently published '**A fairer rented sector**'. One in four private rentals in England fails to meet the decent home standards. Data suggests that private tenants are almost three times as likely to be exposed to damp as social housing tenants. Yet, disrepair actions have been limited within the scope of legal aid, so while we have the legislation to protect individuals, it makes it harder for private tenants to force landlords to carry out repairs and claim damages from them.



Title: Number of Provider Offices in the decade since LASPO 2012.

So if LASPO is to be measured against its initial stated objective of targeting assistance to those who need it most, distinct from the original Rushcliffe Committee’s intention of providing ‘*legal advice for those of slender means and resources, so that no one would be financially unable to prosecute a just and reasonable claim or defend a legal right*’^[2], how effective can we deem it to be?

Here we come up against a conspicuous absence of data. Unfortunately, there is no official measure of legal need in England and Wales. All we have are official statistics about the current deployment of legal aid. In particular, the closure on 1 April 2013 of the Legal Services Research Centre, which both commissioned and undertook important research into the justice system, instantly reduced the volume and quality of information we have about people’s experiences of social welfare law. In the intervening years, a number of studies have been undertaken, but the approach has tended to focus on a particular practice area or geographical location. Consequently, there is a lack of data about the level of legal need in our communities, or about the legal aid sector as a whole and how it sits within the justice system and alongside other public service departments.

The figures that the LAA provides on a quarterly basis provide us with details around legal aid matter starts, completed cases and expenditure. Whilst the numbers are clear-cut when it comes to slashed funding, the more complex task is assessing unmet legal need – that is, people being turned away from services, unable to access the level of service they require or unable to access any for of legal support at all.

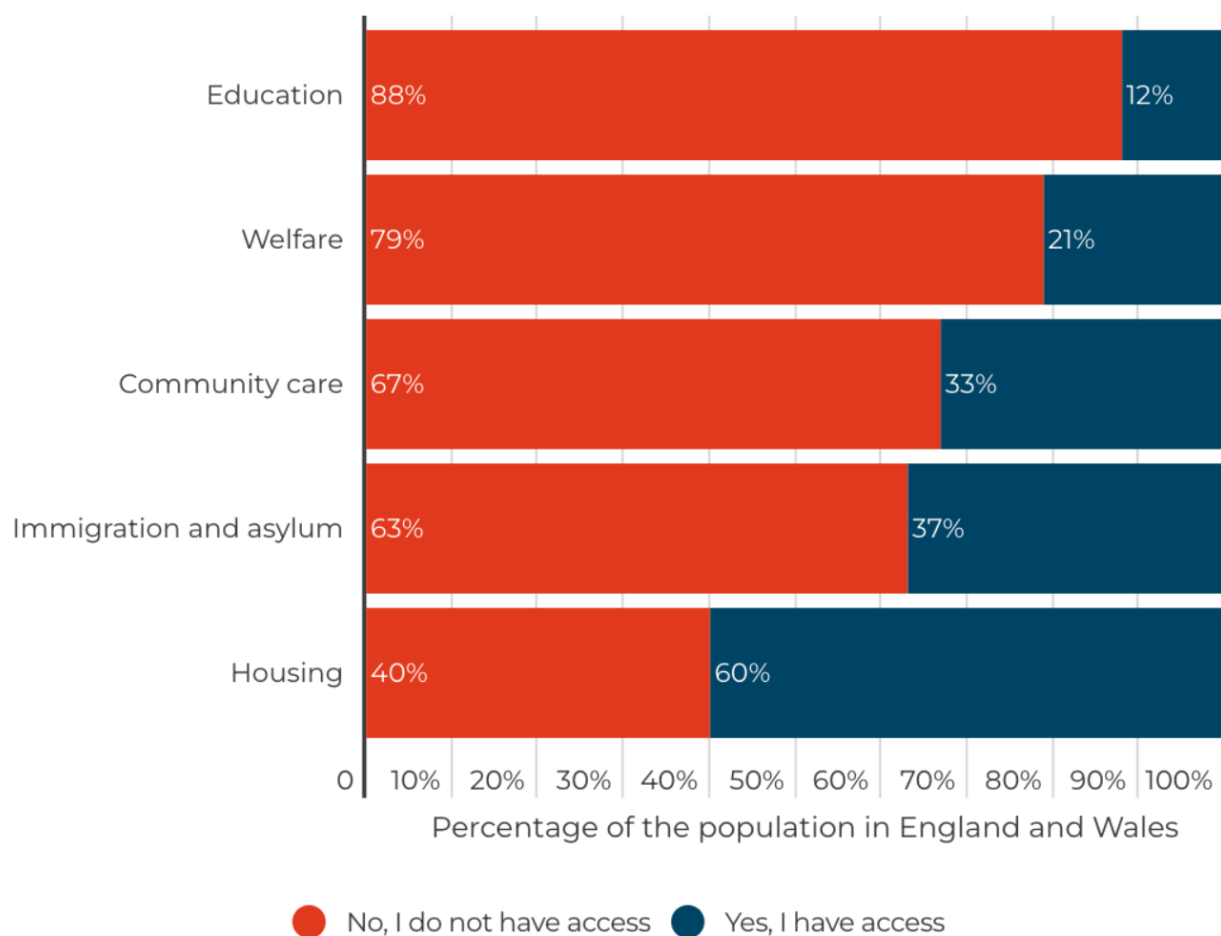
In 2019 the Legal Services Board and The Law Society published the findings of a major legal needs survey for England and Wales. The study was one of the largest of its type, with data collected from 28,663 people. It must be noted that this survey did not concentrate on the crime, family and civil issues that remain within the scope of legal aid. However, the findings

were a useful indication of broader legal need and helped us to understand some of the significant gaps between legal aid provision and the needs of the public. Legal need is slightly more problematic to determine than other areas of public service. It is likely that an individual will need the NHS at some point. All children requires some form of education. But while the 2019 survey found that 64% of respondents experienced a legal issue in some form in the past four years, the specific nature of this is unclear and it would be useful to repeat the exercise on a regular basis to enable us to determine legal need and how patterns of need change in response challenges such as rising inflation or public health emergencies. The following graph shows data collected by the Law Society in 2022 with regards to access to legal aid providers.

[1] Domestic Abuse Commissioner, "A Patchwork of Provision : How to meet the needs of victims and survivors across England and Wales", November 2022

[2] Brooke, Sir H. (2017) The History of Legal Aid 1945-2010, p5. Available at: <https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-6>

Access to legal aid providers



A further issue around data (and we note the excellent work of Dr Natalie Byrom and the newly-launched **Justice Lab in this area**) is the lack of harmonisation around the data collected and the methodology used by the respective government departments. Those of us working in policy are often asked to demonstrate the cost-saving implications of access to legal advice and representation. In certain areas, e.g. homelessness, it is easier to compare the cost of providing a family in rent arrears with legal advice to help them remain in their home to the cost of a local authority responding to a homelessness application if that family is evicted. It is a far more difficult task to apply the same rationale to other areas of social welfare law. We cite above the school-to-prison pipeline, but it is very difficult to quantify the cost of advice to a child on the cusp of exclusion and alternative opportunities for them against the cost of a prison placement.

What now?

On Friday, 31 March, Lisa Nandy, Shadow Secretary of State for Levelling Up, Housing and Communities told Lewis Goodall on The News Agents podcast that her magic wand wish was 'to restore legal aid as access to justice has to be the basis of a decent country.'

Sir Bob Neill, Chair of the Justice Select Committee and MP for Bromley and Chislehurst (speaking in 2022) has also stated "It ought to be on the new Prime Minister's agenda to invest in the justice system...The system is holistic, if one bit goes wrong it has knock-on effect on other parts of the system."

It is our hope that in framing policy for the years to come, politicians join up these areas of public service and recognise the role that legal aid plays in underpinning them. Cuts to civil legal aid have knock-on effects on criminal legal aid and the work of other departments. A cost to families, to prisons, to schools, to local authorities. Most of all they have significant financial, social and health costs to the individual. This upcoming civil legal aid review and general election offer us the opportunity for a recalibration. To think about the justice system that our society needs. There must be a recognition across government that access to justice is not a concept that can be hived off from other areas of public life. The law, and access to advice, underpins them all. Nor is it something that we can have for free. It is a choice that we make as a society: either we decide that the law should apply to us all equally or we don't. If we do there is a cost. We believe that it is a cost worth paying, which both reduces public spending in other areas and has an overall beneficial impact on us all as a society.

Rohini Jana
Head of Parliamentary Affairs
6 April 2023

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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 (LAPPG) 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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