

Review of Civil Legal Aid

Resolution's response to the Ministry of Justice – February 2024

Resolution's 6,500 members are family lawyers, mediators, collaborative practitioners, arbitrators and other family justice professionals, committed to a non-adversarial approach to family law and the resolution of family disputes. Resolution members abide by a Code of Practice which emphasises a constructive and collaborative approach to family problems and encourages solutions that take into account the needs of the whole family and the best interests of any children in particular.

Resolution is committed to developing and promoting best standards in the practice of family law amongst both its members and amongst family lawyers in general.

We also campaign for better laws and better support for families and children undergoing family change. We believe the family justice system as a whole needs to be reviewed. We have published [Resolution's Vision for Family Justice](#), setting out where and how changes need to be made in the short, medium and long term, based on our members' experience and feedback.

This response provides evidence about the current state of legal aid from the perspective of our members and their clients. It has been prepared by Resolution's Legal Aid Committee, with help from the Domestic Abuse Committee.

Overarching questions

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

In a recent survey of our membership, 68% agreed publicly funded legal information and early legal advice would benefit their clients: “It would manage expectations from an early point, meaning less likelihood of contested matters in future.”

Our members tell us that the reason practitioners are increasingly reluctant to provide legal aid services is because the level of fees is so low. In 1996, when fees were last increased, [legal aid rates for certificated cases](#) were £66.00 per hour for cases in the County Court, and £75.00 per hour for the High Court. According to the [Bank of England inflation calculator](#), the equivalents today would be £126.00 and £144.00 per hour. Instead of any increase, rates were cut in 2011, so the current rates for cases heard at District Judge, Lay Justice or Circuit Judge level (equivalent to the old County Court rate) is £54.90 (£56.70 for advocacy) and the High Court rate is £65.75 per hour. These hourly rates do not meet the cost of running a practice. The Law Society’s Leadership and Management Section Financial Benchmarking Survey 2023, produced by Hazlewoods LLP Accountants, found that the median cost per employed fee-earner was £60,551 per year or £111.48 per hour.

Family fee schemes were introduced before the implementation of LASPO on the basis of the swings and roundabouts of cases balancing each other out. In the post LASPO world qualifying cases are more complex and are not balanced by simpler cases compounding the challenges of low fees.

Family mediators are an important part of legal aid services and face similar issues to legal providers due to the low rates of remuneration (including for all issues child inclusive mediation), the lack of an increase in remuneration for so long, removal of the willingness test fee and onerous administration. Preparation for a MIAM, providing it and also undertaking an assessment of means can take much more than an hour, yet the fee is very low.

Since the removal of legal aid in most family cases in 2013, cases where both parties represent themselves are up 25% (now standing at over 40% of cases), and by over 40% in private law children proceedings¹. Litigants in person take up more Court time and put more pressure on Judges. Members report that if the other party is a litigant in person, they are often expected to do extra administration to ensure the case runs smoothly. If the solicitor is representing a party under a legal aid certificate this may mean they will not be paid for the work they do due to the way the fixed fees operate. Our solicitors report that they are often appointed in Rule 16.4 cases ² where there may be two parents who are litigants in person and a child may be the only party represented and the court needs assistance from a solicitor in the case. Our experience is that these Rule 16.4

¹ [Family Court Statistics Quarterly: April to June 2023](#)

² These are cases where the Court makes a child a party to private law proceedings (represented by a Guardian). Children who are parties to proceedings are eligible for legal aid and so solicitors can be instructed.

cases are complicated and lengthy - in part due to the presence of litigants in person - and the administrative burden for the case then rests on the child's solicitor increasing costs to the legal aid fund.

Tailored legal advice should be available as an integral part of encouraging the use of out of court dispute resolution (DR) and maximising its chances of success, and to manage people's expectations before the making of any application to court. Legal aid should be made available for other alternatives to court, including collaborative practice, as well as for Resolution's single family lawyer scheme (Resolution Together), to ensure those with limited means are able to access solutions that are best suited to them.

The NAO in its review of Government management of legal aid stated that 'Providing access to early legal advice and mediation has the potential to reduce wider costs to the system'³. However, signposting to and encouraging the use of legally aided family mediation, via early legal advice, is lacking. National Statistics show that Legal Help has fallen continually and significantly to a small fraction of the level prior to implementation of the LASPO Act 2012. Legal aid providers were the major point of referral to out of court dispute resolution⁴ so some of those who might have benefitted from direction to legally aided mediation will have simply missed out. Mediation Assessments and Starts still stand at under a half of pre-LASPO levels. Despite legal aid still being available for mediation, numbers have plummeted to around half as many as before LASPO⁵.

Mediation is more robust where supported by legal advice. This enables participants to use mediation to find a full, workable and effective settlement, and to have legal advice on any legal issues arising within the mediation which the Family Mediation Council's Code of Practice prohibits their mediator from providing. The majority of mediators themselves encourage parties to have independent legal advice to support and inform the mediation process, as a protective measure, and to facilitate implementing their proposals via a binding consent order, including in complex situations, which is more cost-effective if a solicitor has been involved from the outset⁶.

In finance cases, properly drafted consent orders are essential once a settlement has been reached, to achieve certainty and finality in divorce, Schedule 1 or TOLATA matters, to maintain a framework for the parties concerned and to ensure suitable enforcement options should there be inadequate adherence to settlement. For example, drafting workable pension sharing arrangements can be complex. Effective symbiotic partnerships operating between mediators and solicitors or arbitrators produce lasting, effective, implemented, mediated settlements.

³ Government's Management of Legal Aid, NAO February 2024

⁴ The [LASPO Post Implementation Review](#) found that "Prior to LASPO, the majority of referrals to mediation were made by legal aid funded solicitors. The removal of private family legal aid from the scope of legal aid removed the opportunity to refer cases towards mediation." (Para 613).

⁵ <https://www.gov.uk/government/collections/legal-aid-statistics>

⁶ Resolution surveyed its members from 9 September to 8 October 2021 about their experience of dispute resolution processes over the last 12 months (through conducting these processes themselves or referring clients to them). 367 members responded to the survey in full. The results indicate that lack of support from a legal professional is one of the main reasons for parties not taking up non-court dispute resolution where it could resolve their case (64% of those who responded cited this as a main reason in private law children cases, and 71% in private finance cases). 69% of those who responded thought that one or both parties not being supported by legal advice alongside the process was one of the main reasons for non-court DR not resulting in settlement of a finance dispute.

An example of the way low fees impact on people experiencing relationship breakdown is that mediators find it almost impossible to find firms to draft Consent Orders confirming the Memorandum of Understanding following mediation under the Help with Family Mediation scheme. This means that although the parties have reached an informal agreement it cannot be formally implemented. The flat fees of £150 for advice and £200 for drafting an order do not allow sufficient time to consider all the possible issues, especially when finance, including pension-sharing arrangements, is involved. The risk of a subsequent claim against the solicitor is too great to justify the fee. Therefore, people cannot finally resolve issues arising from relationship breakdown and move on with their lives.

Mediators report that the [family mediation voucher scheme](#) is better remunerated than legal aid mediation. In order to support expansion of legal aid mediation, there needs to be:

- A realistic increase in legal aid rates paid for family mediation
- A separate fee element for child inclusive mediation where the mediator meets with the child
- Properly funded MIAMs
- A fee for means assessment on a mediation intake, including a fee for undertaking a means assessment which is then abortive due to failure to then provide substantive evidence
- In cases involving kinship carers and special guardianship orders, mediators may be working with parents, grandparents and wider family members; but there is no increase for more than 2 parties to mediation

At a time when the family courts and the judiciary are suffering from a lack of resources and a massive backlog - and as the Government looks to divert family matters away from court where it is possible and practical to do so - we believe early legal advice is a vital part of the solution. In Scotland, a World Bank report⁷ found that for every £1 spent on legal aid in family cases, the state saves £5 elsewhere (through, for example, reduced court spending and fewer people relying on benefits).

People need to have access to other support and early advice that is pertinent to their individual circumstances. The importance and positive impact of early access to legal advice (which advice is not representation) is well recognised. Early legal advice helps people understand their legal rights and responsibilities and understand where court is inappropriate; is a point of appropriate referral away from (or to) court to resolve issues; and manages expectations on outcomes. It can help people feel empowered and confident that they don't necessarily need a judicial decision and about entering mediation or other DR. The House of Commons Justice Committee recognises the value of early legal advice for families and legal advice alongside mediation⁸.

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

Please provide any specific evidence or data you have that supports your suggestions.

⁷ [A Tool for Justice: The Cost Benefit Analysis of Legal Aid \(worldbank.org\)](#)

⁸ 95 to 101 [The Future of Legal Aid](#) July 2021

We understand that people experiencing family issues are also likely to have other legal issues associated with them, such as housing or debt. At present, the legal aid scheme is restricted in scope, which means that even if they can find a family legal aid provider able to take on their case, it is very unlikely that their other legal needs will be met.

The scope of family legal aid

- Private family law legal aid should be available for representation of victims **and** perpetrators in child arrangements proceedings where there are allegations of domestic or child abuse until the conclusion of any fact finding hearing or the court has decided there is no need for such a fact finding hearing. This is intended to address the problem of perpetrators seeking to use children proceedings to abuse their victims more effectively than the provisions in the Domestic Abuse Act 2021 alone, as well as providing equality of arms. If facts are proven legal aid would carry on for both parties. If the court decides that there is no need for a fact finding hearing, or facts are not found, legal aid should continue for the victim (who would have been assessed on merits and provided gateway evidence).
- We are concerned that there is no legal aid to advise people on their legal rights and responsibilities before they cohabit or have children. We believe that some of the problems our members see following relationship breakdown could be avoided if people had a better understanding of the law in this area.
- In public law proceedings, removal of a child from home, when living there under a care order, should be treated as an emergency application with non means non merits legal aid for parents/anyone with parental responsibility.
- Non means non merits legal aid should be available for parents applying for discharge of a care order for a child living at home (or a simplified merits test applied).
- We were pleased to see the removal of means testing of all applicants under 18 for civil representation and family help higher; but this should be extended to all levels of service where the applicant is a child (family mediation, legal help, family help lower and Help at court).
- Legal aid should also continue for a young person once they turn 18 until proceedings or mediation have ended.
- Non-means/non-merits tested legal aid should also be available for:
 - Intervenors in public law proceedings, for example, those against whom findings are sought and for whom the consequences of any findings that they have caused harm to a child would be very severe.
 - Intervenors in public law proceedings who are family members joined to proceedings as the court has considered them to be people who should be parties.
 - Those who are being assessed for or who are applying for a special guardianship order in public or private children proceedings. (as set out in joint briefing prepared with Family Rights Group, ALC and The Law Society).
 - Applications in relation to protection from harm, i.e. domestic violence, forced marriage and female genital mutilation protection orders.

- Family members who had a child arrangements order and/or had parental responsibility at the start of public law proceedings even if an interim care order is then made and their parental responsibility has been ended.
- children who are subject to wardship/inherent jurisdiction or deprivation of liberty applications and extended beyond their 18th birthday if proceedings continue after that time.

Means testing

We remain concerned that the means-test review will take so long to be implemented and will not improve access to legal advice and representation to the extent that is needed. There needs to be a realistic expectation in terms of evidence requirements in order for policy changes to be successfully implemented. Without this, there is a real risk that providers will be driven away, and whilst there may be more people theoretically eligible for legal aid, there will be less providers. The proposed abolition of passporting all Universal Credit recipients will make the administration of private family legal help too complex and even less sustainable.

- Existing recipients of legal aid should be able to seek a reassessment under the new means-testing rules, when implemented but there needs to be a calculation tool for providers to be able to assess if their clients are better off under the new rules or old rules and the work involved should be chargeable.
- The means test thresholds and disregard figures need to be up to date at the time of implementation and updated on an annual and index linked basis. A 3 to 5 year period is simply too long in light of the current economic climate and cost of living/inflation projections. At most the review period should be no longer than 3 years and ongoing i.e. every 3 years, and based on figures not more than 12 months old.
- Housing benefit payments should not be removed from the income disregards regulations.
- The housing cap of £545 should be reviewed.
- The whole value of the primary residence should be disregarded.
- We do not support the creation of a new mandatory disregard in relation to inaccessible capital and introducing a charging system to recoup legal costs in these cases.
- Consideration should be given to a cap on overall contribution out of a person's total income.

It is essential to have a simplified process (to explain, evidence, apply and audit) to access eligibility for family mediation and to increase the number of families accessing/benefiting from it.

Providers should be able to claim a fee for means assessment especially for controlled work and for mediation intakes and/or there should be a simplified means test for civil legal help, family help (lower and higher), and mediation intakes.

Unfortunately, the intended means test changes will not reduce the administrative burden for our mediator members or encourage them to continue to deliver publicly funded mediation services. In fact the burden will increase at a time when they are so needed by families and the family courts.

There is a need for an online calculator for providers, and one for the public, to produce an accurate assessment of eligibility. We appreciate that the Legal Aid Agency has delivered an online checker for providers; but it does not yet produce a completed Legal Help Form for the client to sign, which would help to reduce errors subsequently picked up on audits. However, an online legal help application process, would improve administration for both the LAA and our members, as it would ensure all required information was provided, and eligibility evidence could be approved before work was commenced. This would considerably reduce the need for manual auditing by the LAA.

Protection for survivors of domestic abuse

Our members regularly report that the regulations on gateway evidence⁹ for private family legal aid are so tightly drafted that evidence which appears to support a survivor's account is rejected because the wording does not exactly match the regulation. Instead of tightly worded regulations, (which cannot be amended fast enough to keep up with the changes in approach to supporting domestic abuse survivors) we recommend that the MOJ should accept as prescribed evidence the professional opinion of a solicitor with relevant specialist accreditation who has met with the applicant. This would better meet the needs of victims who may simply not have access to any other form of evidence.

Members' experience is that doctors are generally reluctant to make unequivocal statements to be used in a legal context. A recent example was a letter from a consultant in A&E rejected as evidence because she stated that the client's injuries 'may be consistent' with domestic abuse instead of 'were' consistent. We doubt that a hard-pressed consultant in A&E would have written at all if they did not consider their patient had been subject to domestic abuse. Another example was when an Independent Domestic Violence Advisor used the word 'we' instead of 'I' in a letter. In addition, a letter or report from an appropriate health professional outside of the UK should be accepted.

Resolution supports the principle of and need for a Qualified Legal Representative (QLR) type scheme, but many concerns, also [shared by leading women's charities and survivors](#), need to be urgently addressed to ensure that the Domestic Abuse Act 2021 protects victims of domestic abuse as intended. Our concerns remain centred on the scheme's ability to meet its obligations under the Act and fulfil the Government's pledge to protect vulnerable parties in the family courts:

- The prohibition on cross examination provisions only apply to new cases so those already involved in family court proceedings cannot access this protection. The provisions should apply in all cases.

⁹ Legal aid is not available for divorce, private law children or financial issues unless there is tightly drafted evidence of domestic abuse or child abuse. This is often referred to as 'gateway evidence'.

- An insufficient number of advocates are currently appropriately trained to undertake this work. Whilst we agree that it is appropriate for participants to have specialist training for the role, the availability of training should have been properly addressed earlier in the building of the scheme. Government should now consider funding and co-ordinating the development of appropriate training.
- A lack of QLRs will compound delays in the family courts and work against one of the aims of the 2021 Act which was to prevent victims being retraumatised through the family courts.
- Legal aid rates are being used as a basis for this work when it is not part of the legal aid scheme and the fee rates are not a suitable base for it. In any event, cases are likely to be complex and we consider that the Ministry of Justice have underestimated the work involved. The remuneration scheme should be reviewed and mirror that for the criminal courts scheme/make it viable for providers.
- The issue of perpetrators using the family justice procedure to abuse victims is also much wider than just cross examination. There are ancillary issues - repeat applications and dragging the process out, among others. It can also be the case that a perpetrator is legally represented but the victim is not. The lack of legal aid only increases the need for QLRs.

Private family law legal aid for representation of both victims and perpetrators in child arrangements proceedings¹⁰, where there are allegations of domestic or child abuse, until the conclusion of any fact finding hearing or the court has decided there is no need for such a fact finding hearing, would be more effective than the prohibition of cross examination in person provisions in the Domestic Abuse Act.

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

Please provide any specific evidence or data you have that supports your response.

In November 2022, Lexis Nexis [published research](#) into Family legal advice deserts. The report highlighted some concerning shortfalls, with some areas showcasing high levels of demand with little to no local family legal aid supply to match it and 1.09m people live in family legal aid deserts. The top 15 family legal aid deserts were identified as:

- 1) Wychavon
- 2) Derbyshire Dales
- 3) East Cambridgeshire
- 4) Ribble Valley
- 5) North Norfolk

¹⁰ Technically, legal aid for respondents remains in scope, subject to means and merits assessment, for civil legal services provided in relation to home rights, occupation orders and non-molestation orders under Part 4 of the Family Law Act 1996. But is extremely difficult to persuade the LAA that an (alleged) perpetrator meets the merits test. A respondent may present their own gateway evidence for a private family law legal aid application where there are cross allegations, which as for victims will be subject to means and merits assessment, or occasionally successfully apply for exceptional case funding.

- 6) Isles of Scilly
- 7) South Hams
- 8) West Devon
- 9) Rutland
- 10) Wealden
- 11) South Holland
- 12) Melton
- 13) Craven
- 14) Selby
- 15) Mid Sussex

Resolution members also identified shortages of solicitors offering family legal aid in Wales and the further north west, e.g. Lancashire. A member in the west country reported that a charity supporting a domestic abuse survivor called all the legal aid providers in the Plymouth, Bristol, Bath areas to secure urgent representation without success.

Resolution members report that finding a barrister who is available to cover cases involving financial, children and domestic abuse matters is next best to impossible and this is not restricted to any particular local area. It is due to the structure of the Family Advocacy Scheme which is not economically viable. In particular, there are no additional 'bolt on' payments in private law cases where there are complex issues or especially vulnerable clients who have difficulty in giving instructions or understanding advice.

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

Please provide any specific evidence or data you have that supports your response.

Members accept that there is always going to be a level of administrative burden where fees are paid with public money. However, the low levels of fees make it difficult to justify continuing to offer legal aid to partners, members or directors of legal firms unless they work in legal aid themselves and are committed to doing so.

Members say that the LAA's assessment, payment and monitoring of Controlled Work¹¹ is disproportionate to the fees. As explained in our answer to question 1, an online system would reduce the administrative burden on providers and the need for manual auditing by the LAA.

There needs to be a minimal administrative and evidence burden for applicants for legally aided mediation and mediation providers in applying the means test for family mediation.

The requirement in the Family specification for 'substantive negotiation' in order to trigger a level 2 fee has often led to lengthy discussions on subjective perceptions between LAA Contract Managers and providers' representatives about whether the work undertaken is 'substantive' or can be described as 'negotiation', particularly when the other party is a litigant in person who is reluctant to engage. This has discouraged some firms from offering Legal Help/Family Help Lower (also known as Level 2) as they do not want to be in the position of being told to repay fees which the

¹¹ e.g. Legal Help, Family Help (Lower) Help with Family Mediation, MIAMs and Mediations

Contract Manager believes have been claimed in error, nor do they want to become involved in making appeals against their Contract Manager's decision.

We suggest that the criteria for Family Help (Lower) could be amended to simplify the evidence requirement for Level 2 fees as follows:

7.58 You may only make a determination that a Client qualifies for Family Help (Lower) where all relevant criteria in the Merits Regulations, Financial Regulations and Procedure Regulations are satisfied including the criteria in Paragraph 35 of the Merits Regulations. In addition, the fee for Family Help (Lower) may only be claimed for those Family Disputes:

- a) which involve more than simply taking instructions from and advising the Client, and providing any follow up written or telephone advice; and*
- b) where there are at a minimum two meetings with the client (which may be in person, by video or telephone) each at least 24 minutes or more in duration; and*
- c) where the dispute, if unresolved, would be likely to lead to family proceedings; and*
- d) which do not primarily concern processing a divorce, nullity, judicial separation or dissolution of a civil partnership; and*
- e) which do not primarily concern advice relating to child support.*

In relation to legal aid certificates, although the LAA has been working on 'Apply', its new CCMS interface, for some time, it is not yet clear how it will work or that it will streamline the system.

The LAA should extend the £25,000 cost limit for wardship, international child abduction, inherent jurisdiction, free standing DOLs and adoption cases. Applications for costs extensions are routinely granted in these cases and yet providers still have to go through the administrative process which also requires LAA caseworkers to spend time on considering applications, such time could be better used on other tasks.

Solicitors should be allowed to claim FAS fees after each hearing/be paid 100% of FAS fees during the case, as Counsel can.

Members report that High Costs Cases are still very problematic and there is a need for a smoother HCCP/VHCC process. Specific issues are:

- Notification should be given to a named person for inactive cases or if thinking of deregistering HCCP.
- If you have had the case plan/claim viewed and comments sent back, it should not have to go back to the same queue as a new case plan/claim when you return it. There should be a queue with a shorter timescale and it should go back to the same person who assessed it.
- The LAA should pay what is agreed, whilst discussions continue on any aspects of the plan which are not agreed.

- Clarity is needed on whether a provider should use the 'Fixer email' or make a case enquiry through CCMS. The scope of the 'Fixer' service is also too narrow.
- The LAA does not always apply its own guidance on translation costs.
- The LAA should to be able to amend the costs limit at their end to avoid providers having to apply once the contract sum is agreed.
- Once the case plan has been approved, the finance team on assessing the claim should not undo the agreements made on disbursements etc which were approved at case plan stage.
- Providers should only need to send in disbursement vouchers once.

4. What potential risks and opportunities do you foresee in the future for civil legal aid:

i) in general; and

ii) if no changes are made to the current system? Please provide any specific evidence or data you have that supports your response.

Members do not see opportunities in legal aid unless it is fundamentally reformed and fees are increased. The main risk is that without reform the system will break down irretrievably. Members say that they cannot attract lawyers to make long-term careers in legal aid. Whilst people may be willing to do legal aid as trainees, they tend to leave for better paid jobs relatively soon after qualification. Mediators also tend to have an older age profile, and find difficulty in attracting younger people, especially those from minoritised communities.

There are fewer senior practitioners left in the system. They are placed in a difficult position, either to become involved in the administration of legal aid themselves, which would reduce their earning potential as fee-earners, or to employ assistants, which would increase the cost of delivery.

Another problem is that if a firm acts for a client in a domestic abuse case, they then feel they should offer a continuing service to deal with the associated children and finance matters. Resolution members say that legal aid finance cases can be amongst the most difficult to deal with because there is not much money available to divide and often pensions are the couple's most valuable asset. However, relatively few practitioners are willing to work for legal aid rates in these specialisms as it makes it so difficult for them to meet their fee targets. The more junior solicitors still doing legal aid work need higher levels of unremunerated supervision from more experienced practitioners, putting more pressure on them.

In addition, the increasing number of child care cases compound the pressure on those remaining in the system, so that burn out is becoming a serious issue.

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

The term ‘downstream benefits’ is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation. Please provide any specific evidence or data you have that supports your response

[A paper by Citizens Advice](#)¹² identified that problems involving relationship breakdown can often lead to housing problems, loss of family income combined with deteriorating home circumstances can negatively impact on children’s educational performance, and contribute to pupil exclusion¹³. Domestic violence has been shown to reduce employee productivity and increase absenteeism¹⁴ as well as resulting in mental and physical health issues.

Citizens Advice used a Home Office calculator¹⁵ to calculate the impact and costs to services of domestic violence and sexual violence taking a population of 110,000 people in the West Midlands:

Total costs	Physical and mental health costs	Criminal justice costs	Social services costs	Other costs (including housing and legal costs)	Human and emotional costs
£10,506,540	£2,264,010	£1,426,022	£268,548	£6,547,960	£33,545,248

Therefore, a reformed legal aid system which provided early advice across a wide range of widely experienced legal problems would be likely to reduce expenditure by local authorities and government departments.

At a time when the family courts and the judiciary are suffering from a lack of resources and a massive backlog - and as the Government looks to divert family matters away from court where it is possible and practical to do so - we believe early legal advice is a vital part of the solution. In Scotland, a World Bank report¹⁶ found that for every £1 spent on legal aid in family cases, the state saves £5 elsewhere (through, for example, reduced court spending and fewer people relying on benefits).

One issue we pointed out in Resolution’s response to the MOJ’s consultation on LASPO¹⁷ was that the Ministry had failed to take into account the contribution that the Statutory Charge¹⁸ makes to the income side of the legal aid budget with repayments not being credited against the legal aid fund. We were told that accurate figures on repayments due or recovered were unavailable and so it was not possible to reflect the true cost of legal aid in family finance cases. However, the Statutory Charge is a fundamentally fair way of funding finance based litigation and if legal aid were once again widely available for these cases, they would to a significant extent be self-financing

¹² Towards a Business Case for Legal Aid, Citizens Advice July 2010

¹³ Bennathan M. The care and education of troubled children *Therapeutic Care and Education*, 2002

¹⁴ Bowlus, A. J., & Seitz, S. N. Domestic violence, employment and divorce. *International Economic Review*, 4, 2006

¹⁵ Mainstreaming the Commissioning of Local Services to Address Violence against Women and Girls, Home Office 2009

¹⁶ [A Tool for Justice: The Cost Benefit Analysis of Legal Aid \(worldbank.org\)](#)

¹⁷ Proposals for the reform of legal aid in England and Wales – Resolution’s response to the Ministry of Justice cp12/10

¹⁸ The Statutory Charge operates where those in receipt of family legal aid who either retain or obtain a financial benefit (other than maintenance) from their representation are obliged to repay all of their legal costs to the legal aid fund.

whilst at the same time saving local authorities and England and Wales government expenditure elsewhere.

Fees

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

Our members tell us that the only incentives provided by the fee system are to reduce or leave legal aid practice. Between 2012-13 and 2022-23, the number of provider offices completing legal aid work fell by 40% for civil law and by 22% for criminal law¹⁹.

Sadly, the predictions in our response to the MOJ's consultation on the fee cuts proposed in the LASPO green paper in 2011²⁰ have been borne out. We repeat them below and hope that this review of legal aid will result in increased fees which enable the system to be revived.

Legal aid lawyers have suffered a cut in fee levels on an annual basis for some 21 years, not least due to inflationary pressures and also the fact that expenses relating to running a legal practice have increased markedly above general inflation figures. There have been only four limited rate increases in legal aid in the last 17 years which makes legal aid lawyers one of the most poorly recognised and remunerated public servants.

Solicitors' practices are very different from, for example, the Bar. Although payment regimes can be similar the two branches of the profession operate in very different ways. Solicitors' practices have significantly greater overheads as a result of their commitment to accessible offices in areas of need and a public outface.

10% seems to be an arbitrary figure and the proposals simply assume that the market can sustain a 10% cut in hourly rates and fees across the board. In fact the cut will represent more than 10% reduction in current remuneration for family providers with the introduction of new fixed fees (those savings have not been factored into the government's figures) and other changes proposed in the consultation, for example, on enhancements. Coming together with scope changes it is difficult to predict impact, but the proposed reduction will inevitably cut margins tighter in an already difficult environment and require providers to assess their future business plans. Whilst our members would prefer the government to reconsider the scope proposals, they report to us that most family legal aid practice profit margins are too tight to tolerate the fee cut and may simply tip some legal aid firms into unprofitability.

It is clear that the combination of the proposals on family scope and financial eligibility will result in a large and sudden reduction in our members' legal aid workloads. This will have a knock on effect for the remaining family legal aid scheme. It is likely that surviving by undertaking domestic violence and public law children cases alone and at the fees proposed is not a sustainable model.

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

No. Please see our answers to question 1 and question 6.

¹⁹ Government's Management of Legal Aid February 2024, para 2.15

²⁰ Proposals for the reform of legal aid in England and Wales – Resolution's response to the Ministry of Justice cp12/10

6.2. How could the system be structured better?

Please provide any specific evidence or data you have that supports your response and any views or ideas you may have on other ways of payment or incentives.

Please see our answers to question 1, question 3 and question 6.

Career development and diversity

7. Is there anything in particular in civil legal aid that prevents practitioners with protected characteristics from starting and continuing their careers?

If yes, how could this be addressed? Please provide any specific evidence or data you have that supports your response

Universities discourage undergraduates taking law degrees from legal aid practice as it will not provide a professional standard of living. Both lawyer and mediator members report the difficulty in attracting younger people to stay in a career in legal aid, as we have explained in question 4.

Those from less affluent backgrounds have higher levels of student debt and it is more important that they can earn a decent income because they lack financial support from their families. At the point where they want to get on the housing ladder or start a family, they tend to leave legal aid.

Mediator members say their profession is seen as a 'cottage industry' and a second career choice for people who have already bought their own homes and had their families. Although there is considerable academic work on the importance of diversity in mediation, mediators are still predominately white and female. A mediator member offered a mediator post at £30,000 a year. It remained vacant for two years, even though the firm offered to pay for training. Once again, low fees are restricting the possibility of change. If numbers of new entrants are low, it is hard to for the profession to become more diverse.

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

Please provide any specific evidence or data you have that supports your response.

Fees need to be increased to allow firms to pay salaries that make legal aid a more attractive career choice.

The LAA could revive the training grant scheme that was operated by the Legal Services Commission.

User needs

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

Please provide any specific evidence or data you have that supports your response.

Given the online divorce process and the huge swathes of unrepresented parties, many people may, for example, be divorcing ignorant of their financial rights and therefore bringing no claims. The vulnerable do not always have access to the support and protection they need. The NAO's report 'Government's Management of Legal Aid'²¹ found that between January to March 2023 in 40% of family dispute cases, neither the applicant nor respondent had legal representation. This was contrasted with 14% of unrepresented parties pre-LASPO in January to March 2013. We recommend that the Government urgently evaluate the impact of the removal of legal aid for most private family law cases, considering where reinstating legal aid could help improve the efficiency and quality of the family justice system²².

Resolution Members in areas where people in the community speak English as a second language say they face additional barriers when trying to access legal aid because there are no free translation services to enable legal aid providers to assess legal needs or financial eligibility. They have to rely on the individual's friends or family members, who are unlikely to be entirely independent in relation to the subject matter, and may not be familiar with legal terms in two languages.

It takes longer to work with clients who need interpreters or who have additional needs, for example due to neuro-diversity, and this time is often unremunerated, either due to the structure of a fee scheme or because the interaction takes place before evidence of eligibility is produced.

As we have explained above in the section on means-testing in question 1, universal credit as a passporting benefit reduces the time and evidence needed to establish eligibility for legal aid. Given the excess of demand over capacity, some firms prioritise universal credit recipients. It is very difficult for self-employed people to access legal aid as it is often more difficult for them to produce acceptable evidence of eligibility and takes more time.

The relative lack of diversity in the provider base makes it more difficult for people seeking legal advice to find a provider who comes from the same cultural background.

10. What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs? Please provide any specific evidence or data you have that supports your response.

The provider base needs to be strengthened before potential clients can have a choice of provider. This means fees must be increased.

11. Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it?

If so, how do you suggest that this is addressed? Please provide any specific evidence or data you have that supports your response.

²¹ NAO February 2024

²² 139 to 141 [House of Lords – Children and Families Act 2014: A failure of implementation](#)

Members report that most of their referrals come via recommendations from past clients or from third sector organisations, suggesting that the availability of legal aid is not well known by the general public.

Mediators find that some of their new clients come from applicants for child arrangements orders alerted to the existence of mediation by the C100 Court form.

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

Please provide any specific evidence or data you have that supports your response.

We believe that the scope of legal aid needs to be expanded to cover a range of widely experienced legal problems. Please see our answers to question 1 and question 4.

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

Please provide any specific evidence or data you have that supports your response

We agree with the NAO in its report 'Government's Management of Legal Aid' February 2024, when it states: *'Evidence suggests that compared with a standard legal aid application, exceptional case funding applications are more resource-intensive for LAA to process and more difficult for providers or individuals to apply for.....'* Family providers find that clients with communication difficulties, mental health problems and mental capacity issues are very likely to be granted exceptional case funding (ECF). As the NAO recommends, client groups routinely granted ECF should be brought into mainstream scope to reduce the burden on legal professionals and the LAA.

We would hope that an expanded scope of legal aid would mean that the concept of ECF became superfluous. However, if it is continued, the application process needs to be made straightforward and legal aid should be available for making the applications, whether or not they are successful in obtaining ECF.

Use of Technology

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

We are interested in hearing about potential improvements from the perspective of legal aid providers and people that access civil legal aid. Please provide any specific evidence or data you have that supports your response.

As we have mentioned in our answer to question 3, CCMS is better than a paper based system but it was designed over 10 years ago, encountered a number of significant flaws when introduced, and is still counter intuitive to use, difficult to change or improve, and needs to be replaced rather than adjusted.

Providers need to have a case management system which can deal with legal aid fee schemes which comes with an additional cost.

The Ministry of Justice's and Advicenow's websites could be linked so that people with family issues could access Advicenow's [four popular family guides](#) which can be accessed by anyone. We believe the development of this kind of legal information should be supported by the Ministry of Justice.

The guides are currently complemented by the Affordable Advice service from Law for Life and Resolution²³. With Ministry of Justice funding, the project could be extended to sign-post people eligible for legal aid to contracted providers in their area.

15. Remote legal advice, for example advice given over the telephone or video call, can be beneficial for delivering civil legal aid advice.

Please provide any specific evidence and thoughts on how the system could make the most effective use of remote advice services and the implications for services of this.

Members say that post the pandemic, more people are choosing remote delivery methods. We support remote delivery where it is the client's choice or the client needs to use technology to communicate.

However, family practitioners also find that the human contact element of face-to-face meetings is very important in establishing a level of trust that allows a client to give their lawyer a true understanding of their situation. This is particularly important when dealing with cases involving abuse of both adults and children. The system must accommodate remote advice but not make it mandatory.

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

Many legal aid clients are digitally excluded for a number of reasons, including poverty, which means they cannot afford to pay for data or the appropriate device to access digital services.

Low legal aid fees make it very difficult for providers to invest in technology.

Some providers have started to pilot AI, e.g. for translation of simple information, such as appointment letters; but the technology is not yet sufficiently reliable to use for more complex documents or for anything to be submitted to Court.

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

²³ The project offers those sorting out their finances after a divorce or dealing with child arrangements issues a blend of step-by-step guidance from Advicenow and fixed-fee, unbundled legal advice from Resolution family lawyers. It uniquely dovetails public legal education with unbundled legal advice to provide low-cost, high-volume practical help for people on low to medium incomes.

We do not believe that this is a category-specific issue and has to be considered on a case by case basis. Resolution has worked closely with HMCTS around the development of MyHMCTS family online services, and much progress has been made. However, member experience indicates that whilst the products produced can cope with the majority of straightforward family cases following the normal pattern, they are not really designed for anything out of the norm.

16.2. Do you think there are any categories of law where the use of technology would be particularly challenging? Please provide any specific evidence or data you have that supports your response.

Please see our answer to question 16.1.

Early resolution

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

Please provide any specific evidence or data you have that supports your response. Other areas for consideration

Please see our answers to question 1 and to question 5.

18. Is there anything else you wish to submit to the Review for consideration? Please provide any supporting details you feel appropriate

We do not have any additional information at this time but we are happy to continue to engage with the review as it continues.