



## **Response to the Ministry of Justice's Review of Civil Legal Aid - Call for Evidence**

**21 February 2024**

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## 1) Introduction

1. Young Legal Aid Lawyers ('YLAL') was formed in 2005. We are a group of lawyers committed to practising in those areas of law, both criminal and civil, which have traditionally been publicly funded. YLAL's members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.
2. YLAL was set up and operates to pursue the following objectives:
  - i. To campaign for a sustainable legal aid system which provides good quality legal help to those who could not otherwise afford to pay for it;
  - ii. To increase social mobility and diversity within the legal aid sector; and
  - iii. To promote the interests of new entrants and junior lawyers and provide a network for like-minded people beginning their careers in the legal aid sector.
3. YLAL has been campaigning around issues relating to access to justice and legal aid since its inception. We believe that access to justice can only be possible where there is a properly funded legal aid system, enabling all within society to access justice on an equal footing.<sup>1</sup>
4. This submission is YLAL's response to the Open Call for Evidence launched by the Ministry of Justice ('MoJ') on 19 January 2024 to gather information as part of its wider Review of Civil Legal Aid ('RoCLA'), which commenced in January 2023.
5. YLAL have, for 19 years, collated evidence addressing the decline of civil legal aid, the issues around access to justice, the hollowing out of the legal aid profession, and the increased barriers to becoming a legal aid lawyer. We have published reports, consultation responses, helped establish independent inquiries, and given evidence to Parliamentary select committees in our efforts to advocate for a genuinely sustainable

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<sup>1</sup> We note the request in the [call for evidence](#) that 'representative groups are asked to give a summary of the people and organisations they represent when they respond'

legal aid system. In this response we will draw on evidence we have prepared previously. A full annex of the submissions we have made previously - relevant to the terms of the review - is included.

6. As a pre-text to all of the answers to this consultation, we wish to stress that civil legal aid is on its knees. We, and others, have warned time and time again, over many years, that the current provision of civil legal aid has meant that, for many, access to representation (and therefore access to justice) is now an illusion, not a reality.

## **2) Submission overview**

7. Our submission seeks to explain why nothing short of an overhaul of the present civil legal aid system can deliver meaningful access to justice.
8. The evidence that we are presenting in our submission is, for the most part, not new. That is intentional. There is no shortage of evidence addressing the problems in civil legal aid. There is no shortage of evidence which confirms that early legal intervention is fiscally responsible. There is no shortage of suggestions about what changes must be made to put civil legal aid on a sustainable path. YLAL have spent nearly two decades casting a light on the issues facing young legal aid practitioners and the sector as a whole<sup>2</sup>.
9. The root of the crisis facing civil legal aid is not a lack of understanding of the causes of the crisis, or what could be done to fix the problem. Rather, the root of this crisis is a lack of political willingness, combined with the - intentional - impacts of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”). As long as government and policy-makers choose to prioritise a stated intention of LASPO - that is, to reduce the MoJ’s spending on legal aid - over facilitating access to representation, advice, and justice for its citizens, then the crisis in civil legal aid will only deepen.
10. If urgent action is not taken, we fear that we will hit a precipice where the discretionary effort that fuels civil legal aid at the moment will come to an end, where demand far

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<sup>2</sup> See the appendix to this submission which provides an overview of the key submissions YLAL has made to government consultations and reports YLAL have produced about the challenges facing the legal aid sector, page 47

outstrips supply, and where any capacity within the sector to invest in the training and development of future legal aid lawyers will have entirely depleted.

11. We urge the MoJ and government more broadly to recognise the implications of non-action. We worry that if this review does not result in material and imminent positive changes to civil legal aid, those working within the sector will be forced to conclude that this is an issue those in power do not take seriously. We note the action<sup>3</sup> that followed the government's implementation (or lack thereof) of the findings of the Criminal Legal Aid Independent Review ('CLAIR') in 2022. YLAL welcomes the use of alternative means of applying pressure and understands why in recent years practitioners have felt compelled to withhold their services.
12. We have focused our responses to the questions raised on those that we, as Young Legal Aid Lawyers, feel best placed to respond to given our remit. We support the submissions of the many other practitioner-led organisations, who we work closely and in solidarity with.

### **3) Limitations of RoCLA**

13. As an organisation made up of junior lawyers - who volunteer their time to contribute to our submissions - the limitations of this review and the failure to act meaningfully in the many assessments of civil legal aid that have previously been undertaken, meant we have struggled to place faith in RoCLA and the ability of its outcomes to effect positive, long-lasting change. We were disappointed that the MoJ made no provision for lawyers to be remunerated for the time spent in engaging with the review, despite our request, thus excluding many of our members (who work at the junior end of the sector) from effectively participating.
14. As far as possible, the submissions in this response have sought to address the 'overarching questions' outlined in the Call for Evidence and to speak to RoCLA's terms of reference. However, YLAL has concerns about the narrow parameters the MoJ has chosen in establishing this call for evidence. The evidence we give which does not relate

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<sup>3</sup> The Law Society Gazette, [Criminal bar begins 'historic' strike](#), Monidipa Fouzder, September 2022.

to specific questions, should be taken to be an answer to question 18 of the call for evidence: *Is there anything else you wish to submit to the Review for consideration?*

15. For example, 'Outcome 5) a)' of RoCLA's terms of reference - ensuring the civil legal aid system is accessible to those eligible - implicitly accepts that the present level of eligibility is adequate.<sup>4</sup> That is a misleading starting point. Individual eligibility has plummeted since LASPO which, as the National Audit Office recently noted, failed to implement any mechanism for routinely reviewing financial eligibility. This has resulted in a passive, sustained reduction in the number of people who qualify for legal aid.<sup>5</sup>
16. The exclusion of eligibility from the considerations of RoCLA will most likely be justified by the carrying out of a legal aid Means Test Review in 2023. However, that review was a one-off undertaking which still fails to provide for a mechanism for 'routine review' of financial eligibility for legal aid, as noted by the NAO. The government's response suggests that capital and income thresholds will be reviewed as part of a post implementation review (PIR) within 3 to 5 years from the new means test coming into operation<sup>6</sup>. A comprehensive review of legal aid should consider a permanent, reliable system for reviewing legal aid eligibility. Any mechanism should, as an absolute minimum, regularly take into account inflation and the cost of living.
17. There is also the more fundamental issue of the substantial narrowing in the scope of legal aid enacted by LASPO. Many issues relating to family, employment, welfare benefits and immigration law became 'out of scope' for legal aid overnight. Others were significantly restricted. The presumption that an issue is out of scope in the absence of an express provision otherwise has also created an uphill struggle for those working in the sector. Multiple studies have found that the provision for 'exceptional case funding' is not working in ensuring access to justice for those with legal issues in out of scope areas. There is ample evidence that the restriction of the scope of legal aid has negative

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<sup>4</sup> The Ministry of Justice, [Review of Civil Legal Aid's Overarching Terms of Reference](#)

<sup>5</sup> The National Audit Office Report, [Government's Management of Legal Aid. 6 February 2024](#), identifies [at page 26] that: "*The static earnings threshold compared to general inflation means that, each year, a reducing proportion of people have been eligible for legal aid. In 2012-13, around 73% of UK income taxpayers had an income below the gross income threshold for civil legal aid and 53% had an income below the magistrates' court gross income threshold. By 2020-21 this had fallen to around 62% and 37% respectively.*"

<sup>6</sup> [Government Response to Legal Aid Means Test Review, May 2023](#), paragraph 451

consequences, not only in terms of meeting public need, but also for the sustainability of the legal aid sector<sup>7</sup>.

18. We also have great concerns that the terms of reference make no explicit mention of legal aid fees. The core objective of improving the 'efficiency' of the civil legal aid system is described by the terms of reference as the "*optimal use of resources to deliver quality civil legal aid services in response to customer demand, paid at a fair rate for work done*". There is no express undertaking to use RoCLA as an opportunity to meaningfully consider legal aid fees.
19. MoJ cannot escape from the fact that it has been 28 years since the base-line rates for civil cases were increased. Fees were reduced by 10% in 2011-12 and have fallen significantly in real-terms. We are not aware of any comparative public service which has been treated in the same way, and we pay tribute to the legal aid lawyers across the country who have continued to provide a service in the face of the extraordinary financial pressures that government inaction has brought about. Research already published in connection with RoCLA - by PA Consulting - has found that the low level of fees is the factor which is most likely to prevent providers from providing legally aided services.<sup>8</sup>
20. The cursory mention of fair pay in RoCLA's terms of reference can be contrasted with the foregrounding of this issue by CLAIR<sup>9</sup>, leading to a central recommendation of a 15% fee increase for criminal solicitors and barristers<sup>10</sup>. Despite the MoJ's refusal to implement these recommendations, CLAIR's ambitious and comprehensive terms of reference should be acknowledged for having enabled a valuable body of evidence to be gathered.

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<sup>7</sup> The Westminster Commission on Legal Aid, [Inquiry into the Sustainability and Recovery of the Legal Aid Sector, 2021](#), identified that: "*The scope of the legal aid scheme is not only relevant to the issue of meeting public legal need, it also shapes the provider base and influences whether services are sustainable. An urgent and independent review is needed in relation to the scope of civil legal aid to determine whether it is currently meeting the needs of those who lack the means to pay for legal assistance.*", page 24

<sup>8</sup> PA Consulting, [Survey of civil legal aid providers in England and Wales: Informing the Review of Civil Legal Aid](#), January 2024

<sup>9</sup> In December 2020 the government commissioned the Criminal Legal Aid Review, with [terms of reference](#) whose first main objective was: "*a) To reform the Criminal Legal Aid fee schemes so that they: fairly reflect, and pay for, work done. support the sustainability of the market, including recruitment, retention, and career progression within the professions and a diverse workforce...*", page 3

<sup>10</sup> Criminal Legal Aid Independent Review, [Report, 29 November 2021](#), paragraph 1.37

21. YLAL welcomes<sup>11</sup> the Law Society’s subsequent legal action against the government in respect of its failure to implement independent recommendations regarding levels of pay in legal aid<sup>12</sup>. The appropriate response by the government should be to ensure that the findings of future reports are followed. We are concerned that RoCLA has been made fundamentally less ambitious in its consideration of legal aid fees.
22. We note that ‘overarching question 6’ of the Call for Evidence invites comments on fees<sup>13</sup>. We are hopeful that this suggests an intention to proactively consider this point and that the views of those working in the sector are taken into account. In short, we simply do not see a future for civil legal aid without an immediate, at least 25% uplift in legal aid fees, with a commitment to establishing an independent legal aid fee review panel, as recommended by the Westminster Commission on Legal Aid.<sup>14</sup> No other intervention will effectively ‘improve the sustainability of the civil legal aid system’.<sup>15</sup>

#### 4) Improving civil legal aid

23. This section seeks to address ‘*question 1*’ of the call for evidence: *Do you have any suggestions of changes that could improve civil legal aid - both short-term and longer term changes?*
24. The starting point for any assessment of Civil Legal Aid, and therefore any suggestion of changes that could improve the system, must be (1) understanding what we (as a society) understand the purpose of the provision of publicly funded legal help and representation to be and (2) understanding why the current system is the way it is.
25. As the MoJ itself has acknowledged, legal aid exists because as a society we recognise that providing legal advice, help and representation is essential in upholding access to

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<sup>11</sup> Young Legal Aid Lawyers, [Statement on the Law Society’s Judicial Review](#) (Criminal Legal Aid Review), 13 December 2023

<sup>12</sup> R (on the application of the Law Society of England and Wales) v The Lord Chancellor & Ors, [\[2024\] EWHC 155](#)

<sup>13</sup> Review of Civil Legal Aid - [Call for Evidence, January 2024](#), Overarching Question 6: “Fees, 6. What are your views on the incentives created by the structure of the current fee system?, 6.1. Do you think these support the effective resolution of problems at the earliest point?, 6.2. How could the system be structured better?”

<sup>14</sup> *Inquiry into the sustainability and recovery of the legal aid sector*, The Westminster Commission on Legal Aid, October 2021

<sup>15</sup> Ministry of Justice, [Review of Civil Legal Aid - Call for Evidence, updated 19 January 2024](#)

justice and the fundamental system of rule of law. A system that does not effectively provide access to legal aid therefore undermines access to justice, and undermines the rule of law.<sup>16</sup>

26. LASPO - the single piece of legislation that has shaped the current system of civil legal aid - was introduced in 2012. Its stated aims were:

- i. *to discourage unnecessary and adversarial litigation at public expense;*
- ii. *to target legal aid to those who need it most;*
- iii. *to make significant savings in the cost of the scheme; and*
- iv. *to deliver better overall value for money for the taxpayer.*

27. In 2011, before the implementation of LASPO, YLAL was part of a coalition of organisations who commissioned an independent inquiry '*The Commission of Inquiry into Legal Aid*' to assess and understand the importance of legal aid, and the cases for and against reducing legal aid. In summarising the impact of the (then) proposed reforms to legal aid, the inquiry described them as a 'retrograde step' and warned *inter alia* that 'cutting legal aid is a false economy' given the significant downstream costs that limiting access to legal representation would cause.<sup>17</sup> We highlight this report to document that the issues that LASPO have gone on to cause were fully anticipated and plain to see.

28. The Public Accounts Committee, in a 2015 report, found that LASPO was introduced without the government understanding the likely impact of the reforms or if "*people who are eligible for legal aid are able to get it*"<sup>18</sup>. At the time it was introduced, MoJ had not completed any assessment of whether "the reduction in spending on civil legal aid is outweighed by additional costs in other parts of the public sector as a result of the reforms.' The chair of that committee, Margaret Hodge MP, in remarks made at the time the report was published, described the fact that the changes to civil legal aid were

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<sup>16</sup> Ministry of Justice, [Post-Implementation Review of Part 1 of LASPO](#), February 2019, paragraph 1

<sup>17</sup> Solicitors Journal, '[Unequal before the law? The future of legal aid](#)', Jon Robins, October 2011

<sup>18</sup> House of Commons Committee of Public Accounts, [Implementing reforms to civil legal aid](#), Thirty-sixth Report of Session 2014–15, January 2015, found that "*Contrary to its assurances to Parliament, the Ministry does not know whether people who are eligible for legal aid are able to get it. The Ministry said in its 2012 impact assessment that it would establish a robust mechanism to identify and address any shortfalls in the provision of legal aid, but it has not done so.*", page 5

made ‘based not on evidence but on an objective to cut costs as quickly as possible’ and described this as ‘deeply disturbing’.<sup>19</sup> Almost eleven years on from the implementation of LASPO, the deeply disturbing impact of a piece of legislation which diminished the rights of individuals to access legal representations, in the interest of departmental cost saving, has become impossible to avoid.

29. The implementation of LASPO, and the failure to understand or take steps to mitigate the impact that cuts would have on access to justice was therefore roundly criticised by the PAC, as it was by the National Audit Office in a report from November 2014. The NAO’s report ‘Implementing reforms to civil legal aid’ highlighted further the short termism that drove the development and implementation of LASPO. The NAO found that LASPO would significantly reduce civil legal aid funding, but reiterated the potential of LASPO to create additional costs to MoJ and the wider government. As with the PAC, the NAO criticised how MoJ ‘did not estimate the scale of most of the wider costs of reform’ and warned that not quantifying ‘hidden costs’ risked overstating the impact of LASPO.<sup>20</sup>
30. Similar criticism followed from elsewhere - *inter alia* the Law Society in a June 2017 report, which found that LASPO had undermined access to justice, resulted in increased costs for the government elsewhere, and added strain to the justice system as a whole.<sup>21</sup>
31. Also in 2017, the Bach Commission, a comprehensive review into the legal aid system led by Lord Willy Bach, a Labour peer in the House of Lords published its findings. The legal aid system was in crisis, the commission found, and was an active threat to the rule of law. People were unable to access justice because of the scope reductions brought about by LASPO and that the civil legal aid system was fundamentally unsustainable, with practice as a legal aid lawyer becoming ‘increasingly unsustainable’. The

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<sup>19</sup> [‘Implementing reforms to civil legal aid report published’](#), UK Parliament, 4 February 2015

<sup>20</sup> [‘Implementing reforms to civil legal aid’](#), National Audit Office, 20 November 2015

<sup>21</sup> Law Society, Access Denied? [LASPO Four Years On: A Law Society Review](#), June 2017, identified that “Without legal advice which is free or subsidised, and accessible, individuals are more likely to wait until a problem has escalated before seeking or accessing help. This means that relatively minor problems which could be resolved quickly – such as rent arrears – can end up becoming much worse – such as resulting in the loss of a home. These escalating problems can create additional costs elsewhere in the state, for example for the NHS and local authorities dealing with increased homelessness and health problems”, page 30

commission also reiterated that 'LASPO may well have cost the exchequer more than it saved', but stressed that more data needed to be collected to determine this.

32. At the time LASPO came into force in April 2013, the Government promised to review the impact of the legal aid cuts within three to five years. After a number of delays, the Post Implementation Review (PIR) was published in February 2019. Echoing what many had said in years prior, the PIR indicated that of LASPO's four aims, there was only clear evidence of costs being saved from the legal aid budget. In other words, there was no clear evidence that LASPO had been successful in 'targeting legal aid at those who need it the most' or in delivering better value for money for the taxpayer.
33. In 2021, the Westminster Commission, a commission created by a cross-party panel of parliamentarians under the auspices of the APPG on Legal Aid published its final report. The report found 'significant issues around individuals accessing the justice system', the 'major sustainability challenges' facing legal aid providers, and that the legal aid system was neither sustainable, nor sufficient<sup>22</sup>.
34. The most recent assessment of the state of Civil Legal Aid can be found in the February 2024 National Audit Office report, *Government's Management of Legal Aid*. The findings of that report mirror what other inquiries into the state of legal aid have now been saying for over ten years, namely that:
  - i. The current system of civil legal aid has been a huge success in bringing about significant reductions to MoJ legal aid spending.
  - ii. However, the MoJ does not know the full costs and benefits of LASPO because it has 'not made progress in understanding how the reforms may have affected costs in other parts of the criminal justice system and wider public sector'.
  - iii. And the MoJ still does not collect sufficient data to understand whether those who are entitled to legal aid are able to access it
35. There is therefore no shortage of evidence - historically or currently - which demonstrates in clear, quantifiable, and unequivocal terms, that LASPO is failing to

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<sup>22</sup> The Westminster Commission on Legal Aid, [Inquiry into the Sustainability and Recovery of the Legal Aid Sector, 2021](#), October 2023

ensure access to justice and is failing in ensuring that the rule of law is upheld. It is staggering that almost eleven years on from LASPO coming into force, it is unclear whether it is achieving its sole (flawed) objective of saving expenditure.

36. As practitioners, we see the impact every day of a system that is failing to meet the basic needs of access to justice. The Law Society's work on legal aid deserts shows the impact that the current civil legal aid system has had on the ability of individuals to access legal advice and representation. The latest analysis, published in March 2023 found the following:

- [community care](#) – 71% people do not have access to a local provider
- [education](#) – nine in 10 people do not have access to a local provider
- [housing](#) – 25.3m people (42%) do not have access to a local provider
- [immigration and asylum](#) – 39m people (66%) do not have access to a local provider
- [welfare](#) – 49.8m people (84%) do not have access to a local provider<sup>23</sup>.

37. Almost eleven years on from the implementation of LASPO, the crisis that many predicted would unfold has unfolded. More people are unable to access justice and for the areas that remain in-scope, there is less provision due to the unsustainable financial reality of running a legal aid practice entrenched by LASPO.

38. A further impact of LASPO and the cuts to funding that have come with it is the crisis in recruitment and retention in legal aid. For over a decade, Young Legal Aid Lawyers have documented the scale of this crisis and have called for more to be done to ensure that a career in legal aid is financially viable and sustainable. That there simply are not enough lawyers to fulfil demand is a critical issue that requires urgent intervention. We address this crisis in recruitment and retention - and the data that reinforces that there is a crisis below - but wish to highlight the existence of a crisis at this juncture. There can be no future for civil legal aid, without a healthy pipeline of future lawyers. At the moment that pipeline cannot really be said to exist.

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<sup>23</sup> Law Society, [Legal Aid Desert Research, updated 8 February 2024](#)

39. The current system is one that prioritises departmental cost saving above all - the rights of individuals to access legal advice, the sustainability of being a publicly funded legal service, and our society's commitment to the rule of law. We see ourselves working above and beyond trying to ensure and provide access to justice in a system that does not prioritise it. Practitioners find themselves facing an ever more complicated bureaucracy and increasingly having to fight with the Legal Aid Agency to secure funding - an exercise for which we cannot bill our time and which reduces our capacity to assist clients amidst soaring demand.<sup>24</sup>
40. When considering the short and long-term changes that need to be made to civil legal aid, it remains our view that a sustainable legal aid system, that values access to justice for the most vulnerable and recognises that the provision of early legal advice is fiscally responsible, cannot be achieved within the confines of LASPO.
41. The recommendations that we are making take into account our day-to-day experience as practitioners, the work that we have done since 2005 in documenting the state of the legal aid sector, and the numerous inquiries, commissions and reports focusing on legal aid. What is urgently needed in civil legal aid is a pathway out of crisis and towards a sustainable future - that pathway must, inevitably, combine urgent short-term interventions (to shore up the immediate future of civil legal aid) and long term shifts away from the existing model of provision.
42. We stress that, as far as we are aware, there is no evidence base which suggests that sustainability, or facilitating greater access to justice, can be achieved by maintaining the current system of civil legal aid - as embodied in LASPO - and making small tweaks. With this in mind we endorse the policy recommendations made by Dr Jo Wilding.<sup>25</sup> Dr

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<sup>24</sup> The Westminster Commission on Legal Aid, [Inquiry into the Sustainability and Recovery of the Legal Aid Sector, 2021](#), October 2023, found that: "*Profit margins have been smaller over decades so often many of the back-office or administrative functions such as billing and casework are undertaken by lawyers rather than support staff. The time taken to do these tasks is time that could be spent undertaking billable work, but the profit margins may not allow for it. We have heard from witnesses that their organisations have already reduced their overhead cost base to a minimum and have no scope to make further reductions.*", page 40

<sup>25</sup> Dr Jo Wilding, [A menu of civil legal aid policy options for a new government](#), 2024

Wilding's expertise and understanding of the current state of legal aid policy is, in our opinion, unparalleled and the suggestions that she has made show that there is a pathway to a sustainable future, should the political will to steer us to that future exist.

43. Given our particular areas of focus as an organisation we wish to stress, of the recommendations that Dr Wilding has made, the need for an immediate increase of funding and the need to urgently invest in the recruitment and retention of legal aid lawyers. We address in more detail what urgent investment in recruitment and retention should look like below.

#### **4a) Changes in the administration of legal aid**

44. Our experience and the evidence we have collected indicates that a factor that has created further strains on legal aid workers<sup>26</sup> and the providers of legal aid the crisis in legal aid - driven by over a decade of under-investment - is the bureaucracy of civil legal aid. This section responds to question 3 of the call for evidence: *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.*

45. We understand 'providers' as being an expansive term in this context - referring not just to the organisations themselves who offer civil legal aid, but also those 'providing' civil legal aid services on a daily basis (i.e. the individual lawyers). In a similar vein to the numerous reports that have commented on the issues with the overall civil legal aid system, there is no shortage of evidence which demonstrates that the current system of how civil legal aid is administered has created unnecessary additional challenges in ensuring that civil legal aid is sustainable and effective.

46. Our members experience that they deal with a "culture of refusal" at the Legal Aid Agency, which manifests itself in (i) unreasoned refusals (ii) poorly reasoned refusals on

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<sup>26</sup> We use the term 'workers' intentionally, as we acknowledge that legal aid providers are reliant on not just fee-earning lawyers, but those referred to as 'administration staff' - including secretaries, billers, IT and HR employees.

the grounds of “merits” despite positive advice from counsel (iii) unnecessary requests for further information that create delay and (iv) unreasonable delays in determining applications. This is an experience that is reflected across the legal aid profession, as noted by the findings of a Legal Aid Practitioner Group survey in 2020.<sup>27</sup>

47. The culture of refusal has a profound effect on the wellbeing of legal aid lawyers’ - 59.7% of those surveyed in the Legal Aid Census 2021, said dealing with the Legal Aid Agency was a frequent stressor/challenge.<sup>28</sup> Daily, our members must navigate the competing pressures of billing targets and doing the best for their clients. The LAA’s (frequently unlawful) refusals and delay often require lawyers to choose between the best interests of clients and acting “at risk” of not being paid.
48. Where practitioners experience ‘pain-points’ in the administering of legal aid, time has to be spent to circumvent these issues. The Legal Aid Agency frequently characterises these tasks as ‘administration’ and therefore not chargeable, fee-earning activity (or undervalues the actual time it takes to do these tasks). As explained by one of our members:

*Hours can be spent establishing whether a client is eligible for legal e.g. obtaining bank statements, carrying out a full eligibility calculation, considering other means evidence, considering the means of a partner. This is all non chargeable work and means so much time is being spent prior to signing a client up before you start getting paid for that work. Similarly, there needs to be an increase in amount that can be claimed for the completion of legal aid applications when you already have a file open. At present for the completing of the application it is seen to be reasonable to charge 48 minutes but in practice it usually takes significantly longer and this is then non-chargeable work.*

[...]

*One part of the administration of legal aid that takes a large proportion of time is the cost increase application process. A low cost limit is granted initially which you then have to apply to increase. This takes time to consider your current costs, consider future costs and to make the application. The LAA will scrutinise the application and if they don’t think it is reasonable they will grant a lower amount or refuse the increase altogether. This leads to further administrative work to appeal the decision or accept the lower limit and have to make another*

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<sup>27</sup> LAPG, [Is there a culture of refusal within the LAA?](#), 10 October 2019

<sup>28</sup> LAPG, [Legal Aid Census](#), March 2022, page 27

*application in quick succession as you reach the limit. This is not efficient for either time or costs.*<sup>29</sup>

49. Not all legal aid cases require using the Legal Aid Agency's case management system, CCMS, but for those that do, our research has found that it is not fit for purpose. There are widespread technical and design difficulties which render processes inefficient – the system is “slow, cumbersome and susceptible to technical error”.<sup>30</sup> LAPG has also found that the problems with CCMS have “pushed the supplier base to an operational precipice”.<sup>31</sup> The bureaucracy “adds to the demoralisation of the profession, which has significant ramifications for its future sustainability”.<sup>32</sup> As the Bach Commission remarked, “*every hour spent on unnecessary administration is an hour not spent helping people with their problems*”.<sup>33</sup>

50. Indicative of this is the experience of a practitioner who works in immigration and asylum who provided the following evidence to a case study carried out by YLAL and the Public Law Project (PLP):

*“I can fight against Home Office decisions. I can fight against the Legal Aid Agency sometimes if I need to. I’ll fight against the courts when they’re slow. But I can’t fight against my own firm, the Legal Aid Agency and the courts and the Home Office.”*<sup>34</sup>

51. We have roundly criticised in the past - and continue to criticise - the insistence that much legally aided work be paid by a ‘fixed fee’ (which generally represents a fraction of the actual work/time required) and have called for an abandonment of the fixed fee system entirely, with a shift towards paying providers at ‘hourly rates’ for the work done. The current state of the civil legal aid system - while not solely caused by the fixed fee regime - suggests that the ‘breathtaking risk’ that the constitutional affairs select committee warned of in 2007, has not paid off.<sup>35</sup>

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<sup>29</sup> 10 months PQE solicitor working in social welfare (housing/community care) legal aid - February 2024

<sup>30</sup> Young Legal Aid Lawyers, [Submission to the Justice Committee Inquiry](#), November 2020, page 27

<sup>31</sup> Legal Aid Practitioners Group, [Manifesto for Legal Aid, 2nd edition](#), 2017, page 28

<sup>32</sup> Legal Aid Practitioners Group, [Manifesto for Legal Aid, 2nd edition](#), 2017, page 27

<sup>33</sup> [Bach Commission, The Right to Justice](#), 2017, page 35

<sup>34</sup> Young Legal Aid Lawyers & The Public Law Project, *Overstretched & unsustainable: a case study of the immigration and asylum legal aid sector*, Dr Jo Hynes, April 2023, page 28

<sup>35</sup> [Constitutional Affairs - Third Report, Constitutional Affairs Committee](#), 18 April 2007

52. We stress, however, that while abandoning the fixed fee system would bring some respite to legal aid providers, the long term impact of doing so will be minimal if the actual fees/rates paid for civil legal aid services are not urgently uplifted.
53. The administrative issues identified above speak to the day-to-day pain points of being a legal aid practitioner. We are acutely aware of how challenging it is to be an organisation providing legal aid services. Legal aid contracts have become incredibly complex, legal aid audits are reflective of a culture of suspicion within the LAA, and the failure to provide a system of payments on account for 'work in progress' locked up in an escape case fee creates serious cash flow issues. For a system that is now, effectively, subsidised by the good-will of practitioners, the degrading impact on morale that the administration of civil legal aid continues should not be underestimated.
54. For there to be a sustainable future for civil legal aid a reset is required in the relationship between the agency that administers legal aid - we endorse recommendations for the creation of new 'arms-length' organisations - and practitioners. as well a commitment from MoJ to co-create systems of administering legal aid with legal aid practitioners.
55. We stress that these are not novel recommendations or those being made for the first time - the Bach Commission, for example, recommended in 2017 that 'immediate action should be taken to fix the Legal Aid Agency's client and cost management system. This should be done by working with a group of users to identify, develop and implement solutions so that it is fit for purpose'.<sup>36</sup>

#### **4b) Sector specific changes**

56. Overarching question 1.1 of the call for evidence asks: '*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?*', and proceeds to list the areas which are (or in

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<sup>36</sup> [Bach Commission. The Right to Justice](#), 2017, page 23

several cases used to be) covered by civil legal aid<sup>37</sup>.

57. YLAL supports the work of several 'area-specific' organisations such as the Immigration law Practitioners Association<sup>38</sup> ('ILPA') the Housing Law Practitioners Association<sup>39</sup> ('HLPAs'). These representative organisations are best placed to provide a detailed insight in respect of this question and we commend their efforts to represent the interests of particular groups of practitioners. YLAL has sought input from a number of our members in order to address this question. These answers should be read alongside the more detailed responses submitted by other organisations. We hope they will be of particular assistance in gaining an insight into the perspective of junior practitioners.

#### 4) b) i) Family

58. In respect of *'question 1.1) a) Family'*, we make the following submissions. Access to legal aid in family has been extremely reduced by LASPO - especially in private family law, where it is only available in cases where there is a history of domestic abuse or child abuse and evidence is available, children proceedings with an international element, in cases of child abduction, or when a special guardianship application is made. Litigants in person in private family proceedings are at an all time high due to this<sup>40</sup>. This is undesirable from an access to justice perspective, but it is also likely that it is resulting in greater financial costs. We have set out elsewhere in this submission the spillover costs to the system of significant numbers of litigants in person and suggest that a broadening of scope in this area could result in savings as a result.

59. There is a recognition by the government that kinship carers need bespoke advice and legal support - legal aid should be made available to them. At the moment it is only

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<sup>37</sup>Ministry of Justice, [Review of Civil Legal Aid, Call for Evidence](#), 10 January - 21 February 2024, Overarching question 1.1: *'Do you have any suggestions of changes that could improve civil legal aid – both short-term and longer-term changes? a. Family; b. Community Care; c. Housing & Debt; d. Immigration and Asylum; e. Mental Health; f. Discrimination; g. Education; h. Public Law; i. Claims Against Public Authorities; j. Clinical Negligence; k. Welfare Benefits; l. Miscellaneous.'* [page 6].

<sup>38</sup> Immigration Law Practitioners Association, <https://ilpa.org.uk/>

<sup>39</sup> Housing Law Practitioners Association, <https://www.hlpas.org.uk/cms/>

<sup>40</sup> Nuffield Family Justice Observatory, ['What do we know about adults in private family law proceedings?'](#), September 2023

available in very limited circumstances, for example if a potential special guardian applies for a special guardianship order, or if a relative is joined to care proceedings - and even in these cases it is means and merits tested. Grandparents can easily fail the means test due to having savings or owning their own house.

60. There are concerns around remuneration for Family Legal Help - the vast majority of providers cannot offer it to their clients because they are not remunerated enough to make it viable. Access to Legal Help can be crucial in finding solutions to avoid care proceedings being issued and should be conducive to achieving the core aim of enabling access to early advice and reducing litigation. Annex C of the Civil Legal Aid Review<sup>41</sup> shows that the volume of civil legal aid controlled work for family (which includes legal help) has reduced between 2018 and 2023. Properly remunerating Legal Help work will result in an increase in the amount of this work being undertaken, which in turn would be expected to reduce the number of cases which reach advanced stages.

#### 4) b) ii) Court of Protection

61. In respect of '*question 1.1 b), community care*', we make the following submissions. We have received evidence relating to Court of Protection work. When representing a person who lacks capacity (P) in the Court of Protection, it is far from straightforward to obtain evidence of means as P will likely lack capacity to manage their finances. Huge delays often arise in P obtaining representation, as representatives must obtain sealed financial orders to show to the bank and DWP as authority to obtain bank statements/ proof of benefits. The evidential requirements should be loosened in such cases. The LAA in particular should liaise internally with the DWP if it requires benefits information.

62. In some cases, P has funds in a bank account in someone else's name (often a family member's). The LAA takes an inconsistent approach, at times demanding that we obtain statements for that account. If the account holder is unwilling to disclose the statements, there is nothing we can do to compel them as the court will not make a financial order against a third party. In any event, it is unclear how the LAA differentiates P's funds from

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<sup>41</sup> Ministry of Justice, [Review of Civil Legal Aid Call for Evidence](#), January 2024, page 16

the account holder's in a mixed account. The LAA should not require evidence that we have no authority to obtain.

63. A P who lacks capacity to decide where to live and receive care/ treatment is deprived of their liberty if they are not free to leave their place of residence and are subject to continuous supervision and control. If, through a litigation friend, P challenges the deprivation of their liberty in a care home or hospital, they are entitled to non-means tested legal aid. However, if P is deprived of their liberty in the community (their own home, a supported living placement), legal aid is subject to a means test. A person's ability to access legal aid may therefore be based on the type of building they live in rather than there being a solid legal basis for those restrictions.
64. Disputes in the COP often revolve around P living in a care home rather than their own home or somewhere they can build independent living skills. In the event that the court orders it to be in P's best interests to move to a less restrictive environment, P's non-means tested legal aid certificate comes to an end and P loses the benefit of legal representation, while we assess their eligibility for legal aid and make an application. Similar delays occur when the LAA requires a reassessment of P's means. This is not uncommon in more complex cases which can take in excess of a year to conclude, or in cases where P turns 18 mid-proceedings.
65. Even in cases where P stays in a care home or hospital, casework can be brought to a halt when the authorisation of the deprivation of P's liberty expires. If the relevant local authority does not renew the authorisation immediately, the LAA will refuse to pay for any work done while there is a gap in authorisation. This is despite P's circumstances remaining the same and any gap being due to administrative delays within the public body. Similarly, it is not uncommon for P to be detained under section for a time. Again, funding lapses until P comes off the section, despite the fact that work is usually vital to plan for P's discharge.

66. In short, it would be helpful if a certificate could run from the point it is granted until the proceedings have been concluded or at least stayed, rather than funding being subject to procedural quirks that don't have a bearing on the substance of the case.
67. The merits test is cumbersome and unnecessary. P is often joined as a party to proceedings by the court as a result of public bodies making restrictive decisions on their behalf. The fact a court has ordered P's joinder should be sufficient evidence of merit. As with all areas it is junior members of staff who deal with the LAA on a day-to-day basis. The work is not chargeable and more often than not involves hours arguing a point with caseworkers who have no insight into the work we do. Junior lawyers in this area are required to liaise with a whole host of additional intermediaries just to confirm P's eligibility, e.g. the court, deputies, family members, public bodies and financial institutions. Inflexible rules on documents being dated within the last 28 days often necessitate repeated requests for fresh information.

#### 4) b) iii) Housing

68. In respect of '*question 1.1 c), Housing*' we make the following submissions. As with all areas - the rates used are not adequate for the current climate and as such only certain areas of housing work appear profitable to law firms. This is mainly certificated work which covers possession, ASB and certain disrepair work. Homelessness cases have an hourly rate of £48.74 (in London). There is a fixed fee of £157. This work is not profitable and as such, many law firms have stopped taking these kinds of cases. This leaves some of the most vulnerable members of society without access to support leaving them to advocate for a roof over their head by themselves. In Liverpool there are now only four housing legal aid providers for the whole area<sup>42</sup>. This has decreased from the already small number of 9 in 2019.
69. There needs to be an increase to the rates used for Legal Help work so that this work can be undertaken in private law firms and remain profitable otherwise the number of providers will continue to decrease and the deserts will increase. There should also be

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<sup>42</sup> The Law Society Gazette, '[Left in the Lurch in Liverpool](#)', Eduardo Reyes, 9 February 2024

the removal of fixed fee work in this area and an increased hourly rate used instead. The urgency of the situation in housing legal aid was laid bare recently by Law Society commissioned research which made the staggering finding that housing legal aid providers ‘are all loss making’<sup>43</sup>. That is, clearly, unsustainable.

#### 4) b) iv) Immigration & Asylum

70. In respect of ‘*question 1.1 d), Immigration & Asylum*’ we make the following submissions.

71. As with all areas of legal aid, an urgent uplift in legal aid rates for *all* legally aided immigration & asylum work, is needed. We note that the government has committed to increase rates by 15% for work relating to the Illegal Migration Act 2023<sup>44</sup>. A 15% rise is inadequate, it remains a real term cut to legal aid rates as it is not in line with inflation. Providing a raise only for work undertaken under the IMA 23 will be insufficient to address the root of the problem in immigration & asylum legal aid - that there are not enough lawyers to deal with the demand. The uplift created will simply create an incentive to take on IMA work at the expense of other work.

72. We note also the need, not only, for the rates of legal aid work to be increased, but also the rates paid for interpreters and experts regularly instructed in immigration & asylum legal aid matters. Interpreters, in particular, play a vital role in ensuring access to justice for individuals with immigration & asylum issues but have not seen the codified legal aid rate of pay changed in over ten years.<sup>45</sup> We note that rates of pay for interpreters assisting with criminal legal matters now stand at £29/hr (in London), £4/hr more than that for civil legal aid interpreters (in London). At the very minimum, the civil legal aid rate should be increased to match that paid for criminal legal aid matters.

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<sup>43</sup> The Law Society, [Housing legal aid: sustainability research](#), 14 February 2024, interim report on housing produced by Frontier Economics found that “*the majority of providers the research engaged with are loss-making. However, after adjusting for the recovery of inter-partes costs, all providers are found to be loss-making the average fee earner is only able to recover around half of the full costs of providing housing legal aid providers rely on cross-subsidisation to sustain their legal aid housing work losses are largely created by low incomes and high cost burdens it’s increasingly difficult to recruit and retain talent, and housing providers are exiting the market.*”

<sup>44</sup> Ministry of Justice, Consultation outcome, [Legal aid fees in the Illegal Migration Act](#): government response, last updated September 2023

<sup>45</sup> The Civil Legal Aid (Remuneration) Regulations 2013

73. We also call for an end of the fixed fee regime in immigration & asylum matters. Fixed fees operate on the basis that for files where work over the fixed fee is done, this will be recouped on files where work claimed is under the fixed fee. This logic is flawed, it frequently leads to work being done pro-bono and deeply impacts on the financial sustainability of those carrying out legal aid work.

74. LASPO took out of scope significant chunks of immigration work. We call for all immigration, asylum, citizenship and trafficking work to be brought back in scope. An inability to access legal advice for those liable to immigration control can lead to particularly stark consequences. Bringing areas that had been brought out of scope back in scope will, only if accompanied by an increase in fees capable of increasing capacity in the immigration and asylum legal aid sector, ensure individuals are able to exercise their rights to remain in the United Kingdom. Research already shows that, while MoJ may save costs in limiting the type of immigration cases eligible for legal aid, those costs simply fall on other governmental bodies to pick up.<sup>46</sup>

75. We were encouraged by the new funding scheme recently announced by MoJ which subsidises the accreditation and re-accreditation of senior caseworkers.<sup>47</sup> We hope that, in the short-term this will lower one of the barriers to the recruitment of the new staff. We are concerned, however, that the scheme is time-limited and will only last until 31 December 2024. This seems a completely arbitrary date, and is at odds with the long term, sustainable thinking that is required to address the significant loss of capacity that the immigration and asylum sector has seen in recent years. We recommend that this scheme is not given an end-date, but is instead assessed periodically, depending on demand and need. This must be complemented by a broader push to encourage the recruitment and retention of legal aid lawyers (which we address below).

76. Finally, YLAL has significant concerns about the wellbeing of juniors working in Immigration and Asylum legal aid. 70% of practitioners experience vicarious trauma or

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<sup>46</sup> Dr Jo Wilding, [‘It’s a no-brainer’: Local authority funding for immigration legal advice in the UK](#), May 2023

<sup>47</sup> The Law Society, [Immigration & Asylum Law Accreditation](#)

burnout<sup>48</sup>. Most feel they are always at or beyond capacity. 33% expect to reduce or leave legal aid practice<sup>49</sup>. We are acutely aware that the wellbeing of practitioners has been detrimentally impacted by the Government's rhetoric towards immigration & asylum lawyers. We condemn this, and note that the attacks on law firms, and threats directed towards immigration practitioners, demonstrate the very real consequences of this type of rhetoric.<sup>50</sup> The MoJ must work with other parts of government to advocate for and protect the crucial role that lawyers play in upholding the rule of law and ensuring access to justice.

#### 4) b) v) Mental Health

77. One of the really key issues with the sustainability of legally aided mental health work is the fee structure. As with other areas, fixed fees are a significant problem. Once work goes over the fixed amount, that work will not be remunerated until it reaches three times the initial amount. Practitioners are driven by serving a client's best interests and providing a high standard of service. However, this invariably involves significant amounts of unpaid work. 83.3% of mental health practitioners reported working longer than the time provided for by the fixed fees in the 2021 legal aid census<sup>51</sup>.
78. The difficulties described above create particularly challenging circumstances for young legal aid lawyers who cannot rely on their Work in Progress (WIP) costs to meet billing targets. This translates to low salaries and a general expectation of working long hours. YLAL were given an example by a young practitioner who was working on an escape fee case that was cost assessed down to below the threshold (by £13) so the LAA refused the claim. They believe this would have translated to around 30 hours of unpaid work. In this particular case, the LAA's decision was successfully appealed against - something which itself took 2.5 hours of unpaid work to prepare.

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<sup>48</sup> Young Legal Aid Lawyers and The Public Law Project, [Overstretched & unsustainable: a case study of the immigration and asylum legal aid sector](#), Dr Jo Hynes, April 2013, page 4

<sup>49</sup> Young Legal Aid Lawyers and The Public Law Project, [Overstretched & unsustainable: a case study of the immigration and asylum legal aid sector](#), Dr Jo Hynes, April 2013, page 28

<sup>50</sup> The *Mirror*, [Asylum lawyers threatened with acid attacks and pet killings by far-right thugs](#), 9 October 2023; BBC News, [Man charged with right-wing terror plot to kill immigration solicitor](#), October 2020

<sup>51</sup> [Findings from the Legal Aid Census. 2021](#), Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman, & Sasha Aristotle, March 2022, page 36

79. Expert remuneration is also a barrier. Instructing experts is often essential in mental health cases but the low rates mean that it is increasingly challenging to find experts willing to conduct legal aid work.

#### 4) b) vi) Education

80. In respect of '*question 1.1 g), Education*' we make the following submissions. 9 in 10 (approximately 53 million) people in England and Wales do not have access to an education provider in their local authority<sup>52</sup>.

81. EHCP appeals are covered by legal aid for all the preparation up to (but not including) the appeal hearing. This is effectively like a midwife supporting someone whilst pregnant but leaving when they give birth. It is an unacceptable model and leaves clients having to navigate a complex tribunal system themselves. The work for EHCP appeals is Legal Help work. It is unclear why this is the case when in other areas, 'certificated' legal aid funding is provided when a hearing is contemplated. Experts are required to be instructed for an EHCP appeal but most will need payment upfront. This creates financial difficulty for small providers with less income. This essentially makes it incredibly difficult for an education provider to make profit from the contract unless they can subsidise significantly with private work or other areas of law.

82. YLAL therefore recommends bringing EHCP appeals within scope for legal aid. This would fix several issues, for example experts could then claim as POA disbursements and providers can instruct barristers for EHCP appeal hearings not just ECF. This work becoming more profitable, as will all areas of legal aid, would mean that more providers take it on, helping to plug the significant gaps in availability.

#### 4) b) vii) Public Law

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<sup>52</sup> The Law Society, '[Education – legal aid deserts](#)', updated 7 February 2024

83. In respect of *'question 1.1 h), Public Law'* we make the following submissions. As with many areas of law, CCMS is not user friendly. Practitioners find that the system regularly crashes, there are difficulties uploading supporting documents and often juniors spend hours on the phone to the LAA trying to sort technical issues out. That is further unpaid work which providers and staff simply cannot afford to keep performing.
84. Practitioners consistently report difficulties obtaining ECF. Providers are often not given clear reasons why they may be refused which is a barrier to making future, successful applications. This issue has been well-documented for many years. For example, the Public Law Project's 2020 research which found that *"A majority of providers (61%) who responded to the survey strongly disagreed with the statement that the ECF scheme currently operates effectively to ensure that clients are able to access legal aid when they need it. Only 5% of respondents strongly agreed that the scheme operates effectively."*<sup>53</sup>
85. YLAL also received evidence regarding the nature of the work required under the standard civil contract and the difficulty in providing this with the resources presently available. The LAA requires firms to be available for potential clients and the public to contact them during the week as part of their LAA contracts, which is not objectionable<sup>54</sup>. However, due to the limited resources firms have, owing to the issues set out throughout this submission relating to rates and scope as well as problems specific to public law such as a particularly high level of fixed-fee work<sup>55</sup>, firms are more often than not unable to take on new cases. It is emotionally draining to not be able to help people in dire need, people who are likely experiencing the most stressful events of their lives. This can also result in staff being exposed to verbal abuse when explaining they lack capacity

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<sup>53</sup> Public Law Project research paper, [Improving Exceptional Case Funding: Providers' Perspectives](#), Joe Tomlinson and Emma Marshall, January 2020 , page 17

<sup>54</sup> 2018 Standard Civil Contract Specification: Part-Time Presence: To provide a Part-Time Presence you must have an Office in the Procurement Area but this does not need to be continuously occupied. The Office must be open and physically accessible to Clients and/or members of the public on a regular weekly basis for at least one full day or two half days per week (subject to unavoidable temporary closures), paragraph 2.36

<sup>55</sup> 97.1% of public law practitioners who responded to the Census reported working for longer than they were actually paid in respect of fixed-fee work, [Findings from the Legal Aid Census, 2021](#)<sup>1</sup> Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman, & Sasha Aristotle, March 2022, page 36

to take on new cases: the side-effects of working in a desperately needed, desperately under-resourced sector.

#### 4) b) viii) Claims against Public Authorities

86. In respect of *'question 1.1 i), Claims against Public Authorities'* we make the following submissions. YLAL received feedback that better training is required for LAA caseworkers in relation to ECF inquest work. Some of our members have found that when calling the helpline regarding these cases, caseworkers are unfamiliar with the type of funding and this causes issues. We received similar input regarding 'Article 2 inquests' and 'wider public interest' cases. Funding is very rarely granted on these files and it may be that bespoke training for LAA caseworkers in respect of these issues would alleviate these problems.

87. YLAL received comments regarding the administrative difficulties associated with legal aid work in this area. For example, CCMS applications are not sufficiently tailored to the particular type of work. This increases admin workload (e.g. when making an application having to enter separate estimates for costs and damages under each head of claim, when often these cases are pursuing damages under all heads of claim and not apportioning). We also heard about issues with submitting costs schedules for inquests that are under £6,000 - the LAA does not actually require these but CCMS does not reflect this. The 8mb upload limit is insufficient for CCMS applications as documents are often larger than this.

#### 4) b) ix) Welfare Benefits

88. In respect of *'question 1.1 k), Welfare Benefits'*, we make the following submissions. There is, at this stage, a certain irony in referring to Welfare Benefits as a legally aided area of law. Legal aid for welfare benefits has been decimated by LASPO. 84% of people do not have access to a welfare benefits provider<sup>56</sup>. The only legal aid now

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<sup>56</sup> Law Society, [Legal aid desserts](#), updated 7 February 2024

available is for Upper Tribunal appeals and onward appeals to the Court of Appeal and Supreme Court.

89. The effect of the availability advice being so severely restricted is plain to see. Claimants have great difficulty understanding how to submit successful first-instance applications without assistance. This, along with a culture of refusal at the DWP, results in a significant proportion of decisions made by work coaches and at mandatory reconsideration stage being incorrect. For example, in relation to PIP decisions from July 2018 to June 2023: 24% of mandatory reconsiderations resulted in a change to the award, but 70% of DWP decisions were overturned at the appeal hearing in the FtT<sup>57</sup>. As we have set out in the following section on downstream benefits of legal aid, welfare benefits is an area with significant spillover benefits that ultimately result in savings to the public purse. It is absurd that presently, the only 'early' legal advice available in relation to welfare benefits is through the HLPAS contract - involving cases where clients are *\*in the process of being evicted\** - a far cry from an 'early' intervention. Welfare Benefits should be brought substantially back in scope.

## 5) Downstream benefits of legal aid

90. This section seeks to address 'question 5' of the call for evidence: "*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.*"

91. Problems do not occur in a vacuum. As argued throughout this submission, funding civil legal aid provision is fiscally responsible and brings with it considerable downstream benefits. As we've already detailed, MoJ was made aware of the downstream benefits of funding legal aid in advance of the implementation of LASPO.

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<sup>57</sup> DWP, [PIP Official Statistics to October 2023](#), published 19 December 2023

92. In 2010 when the government first announced its proposal<sup>58</sup> to cut £350 million from the legal aid budget (through what would ultimately become LASPO), YLAL prepared a report on the impact of legal aid cuts on the ability of MPs to help their constituents. Karen Buck MP wrote in the foreword that *“it won’t be too long before it becomes obvious that the absence of effective representation and early intervention in debt, housing and other cases will end up costing more than is being shaved from the social welfare legal aid bill.”*<sup>59</sup> This report also demonstrated that the spillover costs of cutting legal aid affect more than prospective clients, other advice providers were acutely aware of the risk of becoming inundated as a result of the stripping back of the availability of legal assistance.

93. New Economics Foundation research carried out for the Law Centres Federation in 2009 indicated that the ‘social return’ for legal help for clients with some of the most complex problems could be as high £10 for each £1 invested<sup>60</sup>.

94. Research by Citizens Advice in 2010<sup>61</sup> looked at the ‘adverse consequences’ of civil problems and found that:

- i. For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34;
- ii. For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98;
- iii. For every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80; and
- iv. For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.8.

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<sup>58</sup> Ministry of Justice, [“Proposals for the Reform of Legal Aid in England and Wales”](#), Consultation Paper CP12/10, November 2010

<sup>59</sup> Young Legal Aid Lawyers, Nowhere else to turn: [The impact of legal aid cuts on MPs’ ability to help their constituents](#), March 2012, page 4

<sup>60</sup> [The Socio-Economic Value of Law Centres](#), New Economics Foundation, 2009

<sup>61</sup> Citizens Advice, [“Towards a Business Case for Legal Aid”](#), Paper to the Legal Services Research Centre’s eighth international research conference, July 2010

95. Despite this, welfare benefits - one of the areas with the most significant downstream savings - was essentially taken out of scope entirely by LASPO (with the exception of cases where 'exceptional case funding' can be obtained or higher court appeals). The second highest 'saver' of the areas of law listed above is employment, which too was essentially removed from scope. This demonstrates that LASPO not only had a devastating impact on the legal aid profession and the clients it works to represent, it was profoundly economically short-sighted.
96. There is, to our knowledge, no evidence that the current system of civil legal aid has brought with it any real downstream benefits (when compared with the pre-LASPO system). An inability to access legal aid may result in fewer challenges being brought against public authorities for unlawful behaviour, for example, but we would reject any framing that views that as a 'benefit'. On the contrary, the evidence that exists suggests that the current system prioritises short-term fixes and 'fire-fighting', severely limiting the downstream benefits that civil legal aid has the potential to deliver.
97. Following the implementation of LASPO, the All-Party Parliamentary Group on Legal Aid conducted research into its impact on MP's advice surgeries. The research (conducted in 2018) sought to establish whether LASPO had impacted on the nature of MPs' advice surgeries. Respondents were asked to compare the current volume of constituent enquiries to a year ago and two years ago. The survey received no responses that said that the volume of casework had decreased either slightly or significantly over the last year. More than half of respondents said that the volume of casework had increased, either slightly or significantly with another quarter stating that it had remained constant.<sup>62</sup>
98. YLAL made a number of submissions to the Justice Committee Inquiry in 2020 explaining the devastating effect LASPO has had on the ability of civil legal aid to realise downstream benefits<sup>63</sup>. We argue that, whilst reducing direct spending by the MoJ, LASPO has in fact resulted in an increase in overall cost to the public purse because it has removed the ability for legal aid lawyers to intervene at an earlier stage<sup>64</sup>. YLAL set

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<sup>62</sup> All-Party Parliamentary Group on Legal Aid, [MP Casework Survey, Findings](#), September 2018, page 5

<sup>63</sup> Young Legal Aid Lawyers, [Submission to the Justice Committee Inquiry](#), November 2020

<sup>64</sup> Young Legal Aid Lawyers, [Submission to the Justice Committee Inquiry](#), November 2020, page 11

out how a lack of early intervention leads to unnecessary and adversarial litigation, which is a direct contradiction of LAPSO's aims. Legal aid provision is skewed towards the use of the court system rather than early advice: this means that money is spent in the height of a crisis rather than at the preventative stage, which is usually cheaper than the former<sup>65</sup>.

99. In YLAL's 2020 submission to the Justice Committee Inquiry, YLAL also identified the additional costs to HM Courts and Tribunal Services resulting from dealing with the rise of litigants in person unable to source legal representation. This is another spillover cost of LASPO, this time with a direct impact on the MoJ. This is another potential saving which has been well-documented for many years. For example, in 2014, research by the National Audit Office estimated that the increase in litigants in person in family courts cost the MoJ £3.4 million<sup>66</sup>.

100. YLAL welcomes some recent efforts by the MoJ to gather data on the downstream benefits of early legal advice in the form of the Early Legal Advice Pilot (ELAP) which began in April 2022 and is due to conclude in March 2024. ELAP's aim is to "*evaluate the possible benefits of holistic, legally aided advice in encouraging early resolution for individuals, and to quantify downstream benefits to central and local government.*"<sup>67</sup> However, as is this case in respect of the RoCLA Call for evidence which forms the subject of the present submission, we believe that ELAP is another example of the MoJ 'fact-finding' information which has been readily available for years. As Chris Minnoch, CEO of Legal Aid Practitioners Group, wrote for Legal Action Magazine in April 2022: "*The truth of this hypothesis is blindingly obvious to anyone in the advice world. However, the MoJ has decided it needs to spend £5m and two years gathering data to make the case to Treasury and justice ministers that if you give lawyers better tools to help clients, they will achieve better outcomes.*"<sup>68</sup>

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<sup>65</sup> Young Legal Aid Lawyers, [Submission to the Justice Committee Inquiry](#), November 2020, page 18

<sup>66</sup> National Audit Office, [Implementing reforms to civil legal aid](#), 20 November 2014, paragraph 1.19

<sup>67</sup> Ministry of Justice, [Early Legal Advice Pilot](#), updated 19 January 2023

<sup>68</sup> Legal Action Magazine, ['Early Legal Advice Pilot: Missing the Point?'](#), Chris Minnoch, April 2022

101. The MoJ has been continually reminded of the downstream benefits of an effective legal aid system by those working in the sector, academics, and independent commissions. The Bach Commission Report recommended in 2017 that an ‘Urgent Policy Change’ required was that: *“The scope of civil legal aid, which has been radically reduced, must be reviewed and extended. The priority should be to bring early legal help back into the scope of legal aid across a broad range of legal issues—in order to encourage early dispute resolution and prevent further distress and cost downstream.”*<sup>69</sup>
102. We consider it a striking failure that, ten years since the implementation of LASPO, MoJ, by its own admission, does not itself have any way of quantifying the downstream impacts of the current civil legal aid system.<sup>70</sup> As noted in the NAO’s recent assessment of legal aid, it is inconsistent with the HM Treasury’s Managing Public Money framework (and therefore not an efficient use of public funds) to not be adopting a whole-system approach when assessing value from public funds<sup>71</sup>. We note that Dr Wilding’s recommendations, which we endorse, stress the importance of the need for a future legal aid authority to ‘implement a research programme and adequate feedback loops to understand need and provision on an ongoing basis, not only in occasional major reviews’.<sup>72</sup>

## 6) Recruitment and retention

103. We note that one of the stated outcomes of the Review is to ensure that the Civil Legal Aid system: *offers a financially viable business option for legal aid providers (both private and non-profit) and is an attractive career option that attracts a high-calibre and diverse workforce.*

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<sup>69</sup> House of Lords Library [Briefing, Bach Commission Report](#): The Right to Justice Debate, 14 December 2017, page 11

<sup>70</sup> MOJ, [Post-Implementation Review of LASPO Part 1](#), published 7 February 2019

<sup>71</sup> National Audit Office, [Government’s Management of Legal Aid](#), 9 February 2024, observed that “*HM Treasury’s Managing Public Money framework stresses the importance of a whole-system approach to assessing good value from public funds. However, MoJ still lacks an understanding of the scale of wider costs arising from LASPO. The 2019 review acknowledged the importance of assessing whether costs may have been transferred to other public services when assessing value for money. But MoJ stated that data limitations and difficulties with isolating the impact of LASPO from other policy and economic changes made this assessment too difficult*”, page 18

<sup>72</sup> Dr Jo Wilding, [A menu of civil legal aid policy options for a new government](#), 2024

104. The current system of civil legal aid - which has been shaped by 28 years without a meaningful pay increase for the work done - is not an attractive career option. From early on in its implementation, reviews of the impact of LASPO expressed concern about its impact on providers and the significant impact it was having on the sustainability of the legal aid 'sector'.<sup>73</sup>
105. The impact that LASPO has had on making civil legal aid an attractive career option, must be understood in the context of the impact that the reforms brought about following the Carter Review into Legal Aid. In YLAL's report on paralegals working in legal aid published in 2008<sup>74</sup>, we expressed concern that the pyramid model envisaged in the Carter review had given way to a culture of 'exploitation' as far as the most junior lawyers in the civil legal aid sector were concerned. In a further report, published in February 2010, we commented on how a career in legal aid had been overlooked in a broader nationwide to increase social mobility and how difficult a career in legal aid work was to sustain.<sup>75</sup>
106. Our assessment is that, in further entrenching the issues of business sustainability that existed before it, LASPO has only served to exacerbate and further encourage a model whereby *inter alia* the most junior members of staff are overworked and underpaid. In a report by the Public Law Project and YLAL published in June 2023, focusing on the immigration & asylum legal aid sector, we found that young lawyers 'face a barrage of overwork, financial unsustainability and serious emotional and wellbeing concerns'. 51% of those surveyed of said they were unable to advance their career in legal aid practice in the way that they would like to or were finding it extremely difficult, 70% have experienced vicarious trauma or 'burnout' from their practice.<sup>76</sup> In 2021, the Westminster Commission heard evidence that "*in many instances BME members of the*

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<sup>73</sup> See, for example, Ministry of Justice and Legal Aid Agency, [Implementing reforms to civil legal aid](#), National Audit Office, 20 November 2014

<sup>74</sup> Young Legal Aid Lawyers, survey and report, '[Paralegals Working In Legal Aid: An Unhealthy Dependency?](#)', February 2008

<sup>75</sup> Young Legal Aid Lawyers, '[Legal aid lawyers: the lost generation in the 'national crusade' on social mobility](#)', February 2010

<sup>76</sup> Dr Jo Hynes, [Overstretched & unsustainable: a case study of the immigration and asylum legal aid sector](#), April 2023

*profession may also be those from less secure socioeconomic backgrounds and so less likely to be able to train and qualify into the legal aid sector and weather the first few years within it.”<sup>77</sup>*

107. The following paragraphs seek to address the barriers to entering the profession in terms of legal education, qualification, and training. This section also includes evidence provided in respect of questions 7 and 8 of the call for evidence, on the interconnected topics of ‘career development and diversity’.

#### 6) a) legal aid education and training

108. The single most important change required regarding recruitment and retention is better pay. As the Law Society’s ‘Proposals for a 21st Century Justice System’ notes, measures designed to streamline the process of qualifying in legal aid can be regarded as *“only a short-term solution to the shortage of civil legal aid solicitors and must be accompanied by a significant increase in legal aid fees, to ensure that a career in legal aid work is financially viable”<sup>78</sup>*.

109. Of the respondents to the Legal Aid Census in 2021 who had recently left the legal aid sector, 59% indicated that they had done so for better pay, working conditions or entitlements<sup>79</sup>. Perhaps more strikingly, 83% of respondents indicated that they did not believe their organisations would be sustainable solely on legal aid<sup>80</sup>. The following submissions, which make recommendations in respect of the support which should be offered to aspiring legal aid lawyers during their legal education and professional training, must be viewed in that context.

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<sup>77</sup> The Westminster Commission on Legal Aid, [Inquiry into the Sustainability and Recovery of the Legal Aid Sector, 2021](#), paragraph 217

<sup>78</sup> The Westminster Commission on Legal Aid, [Inquiry into the Sustainability and Recovery of the Legal Aid Sector, 2021](#), October 2023, page 24

<sup>79</sup> ‘[Findings from the Legal Aid Census, 2021](#)’ Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman, & Sasha Aristotle, March 2022, page 60

<sup>80</sup> ‘[Findings from the Legal Aid Census, 2021](#)’ Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman, & Sasha Aristotle, March 2022, page 63

110. The crisis in legal aid recruitment and retention is well-documented. The Legal Aid Census in 2021 found that 41.1% of organisations carrying out legal aid work did not offer training of new practitioners. Of those who did not offer training, 43.8% provided responses indicating that training practitioners was not cost effective or they could not afford it<sup>81</sup>. It should go without saying that without a sustainable system for training the next generation of legal aid lawyers, the outlook for the future of the sector is bleak.
111. A priority for the MoJ should be a return to funding training and qualification placements in legal aid. As the Westminster Commission on legal aid in 2021 noted: *“Legal Services Commission used to award publicly-funded training grants of £20k per trainee, per annum to legal aid firms to allow them to fund 100% of the tuition fees of the Professional Skills Course, and to contribute towards Legal Practice Course fees and the trainee’s salary for the two years of their training contract. This practice assisted more than 750 trainees in qualifying but ceased in 2010.”*<sup>82</sup>
112. Currently, the only funding available for training as a solicitor in civil law which is provided by the MoJ is the Legal Aid Training Grant Scheme (LATGS) which commenced in November 2023. This is a grant scheme attached to the Housing Loss Prevention Advice Service (HLPAS). LATGS appears to be being used as a pilot. YLAL is not aware of any official announcement of LATGS. It is referred to in the HLPAS ‘Provider Guidance’ which states that *“Details of the Training Grants programme will be provided outside of this guidance”*<sup>83</sup>. However, those details do not appear to have been published. The following information has therefore been obtained primarily from job listings by providers.
113. LATGS funds either; SQE1 and SQE2 including prep courses, or the Professional Skills Course element of the LPC. It does not cover any other form of training relevant to the area of law trainees will be working in, e.g. housing, debt, and welfare benefits. YLAL is concerned that LATGS only covers 75% of the Law Society’s recommended minimum

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<sup>81</sup> [‘Findings from the Legal Aid Census, 2021’](#) Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman, & Sasha Aristotle, March 2022, page 21

<sup>82</sup> Recommendation D: Recruitment and Retention, [Westminster Commission](#) on Legal Aid Inquiry

<sup>83</sup> Legal Aid Agency, [Housing Loss Prevention Advice Service. Guidance for Service Providers](#), August 2023, paragraph 13

salary which is currently £26,068 in London and £23,122 outside London. This represents less than half the 'cost' of an employee to a provider once National Insurance, pension, area-specific training, and supervision costs are factored in.

114. YLAL welcomes the introduction of a publicly funded training grant scheme. However, we submit that if this is to make any meaningful difference - when compared with the scale of the crisis in recruitment and retention - it should at least cover the Law Society's recommended minimum salary<sup>84</sup>. Future pilots should be publicised and the input of practitioners should be sought.
115. Until this very recent development, there have been no publicly funded training grant schemes for aspiring civil legal aid lawyers. The sector has therefore taken matters into its own hands. We commend initiatives such as the Justice First Fellowship<sup>85</sup> set up by The Legal Education Foundation (TLEF) in 2013 to provide fully-funded training contracts (and previously pupillages). In our submission to the Law Society's Green Paper, we referred to a number of these initiatives and made several recommendations<sup>86</sup>. We suggest these are taken into account.
116. One notable example of the resourcefulness of the legal aid sector has been the Social Welfare Solicitors Qualification Fund ('SWSQF')<sup>87</sup>. In 2021, YLAL contributed to the launch of a national fund intended to help to improve social mobility within the legal profession, address the recruitment and retention crisis faced by the social welfare and legal aid sector and as a result improve access to justice for those who need it most. SWSQF provides financial assistance for the SQE preparation courses and assessments to applicants currently working in social welfare law for organisations serving disadvantaged communities.
117. YLAL is proud to be one of the organisations which helped to launch and continues to support SWSQF. We are grateful to our partner organisations; City of London Law

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<sup>84</sup> The Law Society, [Recommended minimum salary for trainee solicitors and SQE candidates](#), July 2023.

<sup>85</sup> Justice First Fellowship, [About the Scheme](#)

<sup>86</sup> Young Legal Aid Lawyers' [Response to The Law Society Green Paper](#): 'Proposals for a 21st Century Justice system', January 2024

<sup>87</sup> Social Welfare Solicitors Qualification Fund: <https://younglegalaidlawyers.org/sqefund>

Society and BARBRI with the support of Legal Aid Practitioners Group (“LAPG”) and Law Centres Network (“LCN”), and the city law firms involved . We are encouraged by this cross-sector approach to working to address the barriers to commencing a career in legal aid. However, as a charitable fund, there are necessarily limitations on its scope, for example, SWSQF does not currently fund employee’s salaries.

118. Another resource which is currently available to assist financially with the training of junior lawyers is the Apprenticeship Levy.<sup>88</sup> The Apprenticeship Levy is a potential source of funding that, if used, can help to stem the recruitment and retention crisis in legal aid. For most firms, the levy can cover up to 95% of preparing for, and sitting, the SQE – depending on the provider, this can be as little as £850 per ‘apprentice’.

119. The barriers to firms utilising the levy appear to us to be a combination of a lack of knowledge about the levy, a wariness of the additional administration associated with employing ‘apprentices’ and the fact that organisations do have to allow ‘apprentices’ to go down to four days a week, allowing the fifth day for paid study. The MoJ must do more to make firms aware of the apprenticeship levy and to alleviate any administrative and financial barriers that may prevent firms from utilising the levy.

120. We note the Apprenticeship Levy does not address issues around pay for junior legal aid lawyers and, as such, we see it as a stop-gap solution that must be complemented by campaigning for the reinstatement of a scheme like the LSC’s training grant scheme. A ‘new’ training grant scheme could complement the apprenticeship levy and allow for money to be directed solely towards salary costs (in contrast to the old scheme, where costs had to be split between salary costs and study costs).

121. YLAL calls on the government to introduce a training grant scheme with the capacity to fund far more trainee solicitors than the LATGS pilot. Such a scheme should cover course and examination fees as well as the Law Society’s recommended minimum salary. Geographical location and area of law should be important considerations in determining how to prioritise the distribution of the scheme’s availability.

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<sup>88</sup> Department of Education, [Apprenticeship funding: the eligible and ineligible costs of training](#), September 2022

6) b) career development and diversity

122. YLAL welcomes the exploration of this topic by the call for evidence. We agree that *“It is important for the sector to reflect the society it serves and make use of the best talent in society, so that members of the public can be confident in the legal services they receive. A more diverse sector also means a more diverse pipeline to the judiciary. The MoJ is eager to understand what more it can do to improve diversity in the context of civil legal aid practitioners.”*

123. Of the two overarching questions of the call for evidence under this heading, we have addressed first the broader topic referred to by Question 8, which asks: *“8. How can the diversity of the profession be increased in legal aid practice, including ethnicity, disability, sex, age and socio-economic background?”*

124. Since 2010, we have published reports reviewing the state of Social Mobility in the legal aid sector. We published social mobility reports in 2010<sup>89</sup>, 2013<sup>90</sup>, 2018<sup>91</sup>, and 2022<sup>92</sup>. These reports provide a longitudinal assessment of social mobility within the legal aid profession. Our response to this question is informed by our lived experience as junior practitioners in legal aid, as well as our social mobility reports.

125. The barriers that we observe in starting and continuing careers in legal aid affect all legal aid practitioners, but are likely to have a disproportionate impact on those with protected characteristics.

126. Our first report on social mobility and diversity in 2010 found that: *‘aspiring lawyers from diverse backgrounds are finding it harder than ever to forge a career in legal aid*

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<sup>89</sup> Young Legal Aid Lawyers: [The Lost Generation in the National Crusade on Social Mobility](#): Young Legal Aid Lawyers response to the Government consultation paper :New opportunities: Fair Chances for the Future (January 2009) and The Panel on Fair Access to the Professions report: Unleashing Aspirations (July 2009), February 2010

<sup>90</sup> Young Legal Aid Lawyers, report on social mobility and diversity in the legal aid sector, [One Step Forward, Two Steps Back](#), October 2013

<sup>91</sup> Young Legal Aid Lawyers, [Social Mobility in a Time of Austerity](#), March 2018

<sup>92</sup> Young Legal Aid Lawyers, [Social Mobility in a Sector on the Brink](#), October 2022

*[...] those from low-income families cannot afford to become legal aid lawyers and the legal aid profession is therefore becoming less and less representative of the people it serves: those without means.'*

127. Our second report in 2013 identified three key findings; high levels of debt combined with low salaries make legal aid work unsustainable for those from a lower socio-economic background, unpaid work experience represented a barrier to social mobility; and work experience was a prerequisite to entry to the legal aid profession. Following on from these findings, we made a number of recommendations, which included calls; for the Solicitors Regulation Authority ('SRA') to reinstate the minimum salary for trainee solicitors, for the Law Society and the Bar Council to issue robust guidance on work experience; for professional course fees to be regulated; and for the professional bodies to consider replacing the current routes to qualification with a form of work-based learning.

128. In 2018, our findings were similar to five years prior - in particular; the impact of the high levels of debt as a result of the costs of qualifying, low salaries, and the need to carry out unpaid work experience to access opportunities remained significant barriers. An emerging theme in 2018 was the high levels of stress junior practitioners were reporting as a result of working in a fundamentally under-resourced sector. The combination of feeling *"underpaid, undervalued, working long hours, and a lack of training and support meant that many felt meeting a basic standard of care to clients represented a significant burden."*

129. The key recommendations from our 2018 report included; for all legal aid firms to reconsider the wages they pay all staff, for the mandatory minimum salary for trainee solicitors to be reintroduced by the SRA and the minimum salary for pupil barristers to be increased by the BSB; for the fees charged by the professional course providers to be regulated by the relevant regulatory body; for companies, firms and organisations in the legal aid or traditionally legally aided sector to adopt our Best Practice Work Experience Charter<sup>93</sup>; for content of the SQE to be amended to ensure that areas of social welfare

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<sup>93</sup> The Charter appears at Appendix 1, Young Legal Aid Lawyers, [Social Mobility in a Time of Austerity](#), March 2018, page 47

law and civil legal aid are properly made available within the contexts at SQE1 and 2 (a request repeated in our recent submission to the Law Society’s green paper<sup>94</sup>); for legal aid providers to recognise, understand and properly address the causes of the emotional and psychological impact faced by those practising in this area; and for greater flexibility to be afforded to those with caring responsibilities and disabilities.

130. Our most recent social mobility report in 2022 collated findings and made recommendations based on data gathered by LAPG in their Legal Aid Census of 2021, which consisted of five online surveys distributed to LAPG’s member organisations and wider networks between March and July 2021. Our three previous social mobility reports had been prepared based on our own survey research. The findings of the 2022 report, along with YLAL’s recommendations in respect of achieving a more diverse sector, are set out below.

131. Social mobility and diversity are, of course, important across all sectors and forms of employment and it is a concern that this is an area in which the government has consistently underperformed<sup>95</sup>. It is, however, especially important to note that a distinctive feature of the legal aid sector is its appeal to people from disadvantaged backgrounds. Students who expressed a desire to work in legal aid were also asked whether their previous life experience had played a role in influencing their decision to pursue a career in legal aid. Of those who were working towards a qualifying degree in law at the academic or vocational stage who gave an answer, 88.4% confirmed that their background or life experiences had had an influence on their choice of career. An analysis of verbatim responses provided revealed that students who personally experienced injustice or poverty (44.9%) and witnessed or heard about injustice (46.4%) were influenced by their experiences to become legal aid practitioners<sup>96</sup>.

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<sup>94</sup> The Law Society’s Green paper, ‘[Proposals for a 21st Century Justice system](#)’, October 2023, para 97: “YLAL would urge changes which saw social welfare areas of law covered by the SQE syllabus, providing all training solicitors a basic understanding of these areas. This may mean that a greater number of aspiring solicitors consider a career in legal aid and will also result in those who do choose this path being better equipped from the outset.” page 17

<sup>95</sup> Social Mobility Commission Report, Monitoring Social Mobility 2013-2020: [Is the government delivering on our recommendations?](#), June 2020, found that “in 77% of areas covered by the report, the Government had made no or inadequate progress since 2013”, page 8

<sup>96</sup> Young Legal Aid Lawyers, [Social Mobility in a Sector on the Brink](#), October 2022, page 10

132. Of student respondents to the Census, 73.6% were female, whilst 24% were male. There is a notable change in this proportion amongst practitioners, where these figures are 60.9% female and 38.3% male. This may suggest that women who start out in the legal aid sector are not being retained long-term and YLAL urges the MoJ to carry out its own research into why this might be.
133. Our 2022 report found that 14.4% of student respondents to the Census were disabled whereas only 9% of practitioners were. The drop-off in this figure between students and practitioners may indicate that fewer disabled students can successfully establish a career in legal aid when compared with the number indicating an interest in doing so. That conclusion may be supported by the fact that 15.4% of respondents to the Census who were leaving the sector considered themselves disabled, which indicates that disabled people are overrepresented in the numbers of practitioners leaving the legal aid sector. This may demonstrate that the difficulties of remaining in the profession disproportionately affect those with disabilities.
134. The same theme - higher representation amongst students than practitioners - as was observed in relation to female and disabled respondents, was apparent in the context of ethnicity. The split between student and practitioner respondents across the most common ethnic groups was: Asian or Asian British - 14.6% of students / 7.1% of practitioners; Black, African, Caribbean or Black British - 4.8% of students / 2.8% of practitioners; Mixed or multiple ethnic groups - 5.3% of students / 4.7% of practitioners; and White British - 57.4% of students / 77.4% of practitioners. Greater ethnic diversity amongst student respondents compared to practitioner respondents may indicate that the difficulties to remaining in the profession disproportionately affect those from racially minoritised groups. It may also reflect that entry into the profession is more difficult for racially minoritised groups.
135. Finally, the proportion of students who indicated that their family was on benefits or eligible for free school meals at some point during their primary or secondary schooling (29.4%) was higher than that reported by current practitioners (18.5%). These data may

support two findings. The first is positive: that legal aid increasingly attracts students from lower socio-economic backgrounds. The second is more concerning: that fewer students from those backgrounds actually establish a career in the legal aid sector when compared with the number of students indicating an interest in doing so. It is the second finding which is consistent with our other social mobility reports carried out since 2010.

136. A positive trend across our four social mobility reports has been a general increase in the diversity of the legal aid profession. However, the theme across all major categories (gender, disability, ethnicity, and socio-economic background) is that those from typically less well represented backgrounds are more keen to work in legal aid to begin with, and have a lower chance proportionally of actually doing so. Therefore, despite the positive trend, YLAL cautions against complacency. It seems likely from our research that much of legal aid's diversity comes from its appeal to people belonging to marginalised groups, rather than its accessibility to them. We suggest that the MoJ undertakes its own research into understanding why the profession may be harder to access for certain groups.

137. Our 2022 report set out the striking difference between the legal profession and others in terms of mandated levels of pay for juniors. We have updated those figures as of February 2024. During the most junior hospital training posts, known as Foundation Year 1, a doctor's basic starting salary is £32,398, in Foundation Year 2 this rises to £37,303<sup>97</sup>. Newly qualified teachers earn at least £30,000<sup>98</sup>, with qualified teachers in inner London earning at least £36,745. There is no minimum salary for solicitors (save for the national minimum wage<sup>99</sup>). The BSB's minimum pupillage award increased in January 2024 to £23,078 in London and £21,060 outside London<sup>100</sup>.

138. As referred to at the start of this section, one intervention which requires no further research to justify is a significant increase in legal aid rates. In a positive development

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<sup>97</sup> British Medical Association, [Pay scales for junior doctors in England](#), The basic pay scales for junior doctors in training in England, updated 24 January 2024

<sup>98</sup> National Association of Schoolmasters Union of Women Teachers (NASUWT), [Teachers' Pay Scales for England](#), dated September 2023

<sup>99</sup> The [National Living Wage](#), will increase to £11.44 per hour for workers over 21 from April 2024

<sup>100</sup> Bar Standards Board (BSB) [announces minimum pupillage award](#) from 1 January 2024

since our 2018 report, the Law Society introduced a recommended minimum trainee salary which at the time of our 2022 report was £22,294 in London and £20,217 outside London. This has now increased to £26,068 in London and £23,122 outside London and is intended to apply to SQE candidates<sup>101</sup>. However, this is not enforceable as it is not recommended by the regulator (the SRA). YLAL recommends, as we have done in nearly all of our social mobility reports since 2010, that a mandatory minimum salary for trainees is implemented.

139. Much of the information above speaks to overarching question 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.”* Further insight can be gained into the answer to this question by cross-referencing data from across the legal profession with the research above relating specifically to legal aid.

140. We have recently been issued with the Solicitor Regulation Authority (“SRA”)’s diversity in law firm’s workforce data<sup>102</sup> in January 2024. This overview covers all solicitors and other employees working in SRA-regulated firms in summer 2023. Although our 2022 social mobility report was prepared using 2021 legal aid census data, a comparison with this the SRA’s research from 2023 may be instructive. The following comparisons can be made:

- a. The proportion of women has increased to 53%, but there remains a seniority gap when it comes to women becoming partners. This can be contrasted with the legal aid workforce which was 60.9% female in 2021.
- b. 12% of employees across all SRA regulated firms in 2023 were Asian. The figure in legal aid practice was significantly lower, at 7.1% in 2021.

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<sup>101</sup> Law Society, [Recommended minimum salary for trainee solicitors and SQE candidates](#), dated July 2023

<sup>102</sup> SRA, [Diversity in law firms’ workforce](#), updated 10 January 2024

- c. 3% of employees across all SRA regulated firms in 2023 were Black, compared with 2.8% of legal aid practitioners in 2021.
  - d. There has been an increase in disabled lawyers in law firms from 3% in 2015 to 6% in 2023. Legal aid practice appears to be more inclusive in this regard, with 9% of practitioners identifying as disabled in 2021. However, when compared to the wider UK workforce, 16% of whom identified as disabled in 2023<sup>103</sup>, both legal aid and general practice appear to underperform.
  - e. YLAL notes the SRA's comment that there has been a '*slight growth in lawyers who are lesbian, gay, bi or prefer another description*' from 3% in 2015 to 4.4% in 2023.
141. There are many potential reasons for the variations observed above, both in terms of how legal aid compares with other legal work and with the general labour market. One thing YLAL suggests our data clearly demonstrates is that there is not a lack of willingness amongst underrepresented groups to work in legal aid. For example, the student census figures referred to above indicated that 14.6% of those pursuing a career in legal aid in 2021 were Asian, higher than the 12% across general legal practice. The MoJ should be concerned by the drop-off of over half to 7.1% (as well as the drop-off across all underrepresented groups) and should urgently undertake targeted research into why this might be.
142. A measure which requires no further evidence and would have an immediate benefit on the social mobility and diversity of the legal aid sector is a significant increase in rates and guaranteed minimum pay, as set out above.

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<sup>103</sup> Office for National Statistics, [A09: Labour market status by ethnic group](#), 13 February 2024

## 7) The cost of inaction

143. This section concludes the submissions we have made above and addresses question 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?*’
144. The current system of civil legal aid is simply not fit for purpose. Individuals with legal problems who require publicly funded legal advice and assistance cannot access the legal help they require. Those who work in legal aid do so in full acknowledgement that the career is not a sustainable one - lawyers and providers are overstretched, underpaid and the discretionary effort and goodwill that powers the civil legal aid system is fast running out. Despite legal aid lawyers being individuals who offer a valued public service, there is no established pipeline for aspiring lawyers to pursue a career in publicly funded areas of law. The existing state of civil legal aid is not an aberration - it is the system created by LASPO working just as it intended. We have already detailed how multiple reviews have found that the only ‘accomplishment’ of LASPO has been to drastically reduce MoJs spending on civil legal aid - the inevitable result of that has been the contraction of the civil legal aid sector.
145. If no changes are made to the current system, then the collapse of civil legal aid provision will continue unabated. The existing system is at breaking point, and it is an economic fiction to assume that it will simply continue as is. To take the legal aid rates as an example, the decline in legal aid provision over the last eleven years clearly demonstrates that if you do not increase rates of pay - and allow them to decrease as drastically as they have - in real terms, then the ‘market’ for providing legal aid will be decimated. The tragedy is that the decimation of the civil legal aid sector has human consequences, and has a wider societal cost.
146. We have made the case for over a decade that the proper provision of legal help and representation should be seen as an opportunity. Access to early legal advice is, as confirmed by evidence, a critical, cost-effective intervention that helps prevent small problems from getting bigger. Legal aid is one of the pillars of the welfare state, and legal

aid lawyers play a vital role in helping members of our society understand, assert and protect their fundamental human rights. We reject suggestions that the current system of civil legal aid is ‘all that can be afforded’. What cannot be afforded is to continue as things are.

147. Because we view the current state of civil legal aid as a function of the civil legal aid system, how it is administered, funded and constrained, we do not consider that changes in enhancing the ‘user journey’ for someone in need of legal aid, or the ‘employment of technology’ is what is required to set the civil legal aid system on a sustainable path. We have kept our submissions in response to this review intentionally narrow, as a reflection of this.

148. Issues around user accessibility and the use of technology in legal aid are important, individuals need to be able to find and access legal representation, for the system to be designed in recognition of the ‘clustering’ of legal issues (i.e. that multiple legal issues..), and for technology to be used, where appropriate, to enhance the provision of legal services. However, there is no point in a technological solution - a one stop shop for accessing legal help - if there are no lawyers available to provide representation, no amount of sign-posting can alter the reality of legal aid deserts, and no amount of remote provision will create capacity where there simply is none. Individuals in a legal aid desert will be unable to find legal representation, regardless of sign-posting. As the National Audit Office recently observed, “*Theoretical eligibility for legal aid is not enough to achieve this objective [access to justice] if there are an insufficient number of providers willing or able to provide it.*”<sup>104</sup>

149. Despite the deep concern we have for the current system of civil legal aid, and the future of civil legal aid if no action is taken, as lawyers committed a publicly funded legal help and representation, we refuse to give up our hope for a properly funded and sustainable system of legal aid. We see a future where legal aid lawyers are paid at a fair rate which recognises the societal value of legal aid, where there are enough lawyers to meet demand, where young people are educated about their fundamental rights, and

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<sup>104</sup> National Audit Office, Government’s management of legal aid, Ministry of Justice and legal aid agency, report summary, 9 February 2024, paragraph 18

aspiring lawyers are encouraged into legal aid and are able to view it as a long-term, sustainable career choice.

150. The recommendations of Dr Wilding - which we have endorsed - chart a path to that future. We urge MoJ to focus on the short term interventions that are required to stem the crisis in legal aid - these include *inter alia* an interim uplift in legal aid fees, in line with inflation; the reintroduction of a training grant scheme (co-created with organisations like ours); and a move away from a culture of suspicion within the LAA which has resulted in a level of bureaucratisation that undermines the sustainability of the current system.

151. As we have done previously<sup>105</sup>, we refer to the conclusion of the Rushcliffe Commission - a committee that reported in 1945 on legal aid and legal advice in England, which found:

*“Many witnesses paid tribute to the work of Poor Man’s Lawyers and Legal Aid Centres, but we are satisfied that though their work is often excellent, and generous as the legal profession has been with their gratuitous service, the total of all the existing free facilities is inadequate to meet the present demand. We think it would be impossible to expect any extension of gratuitous professional services, particularly as there appears to be a consensus of opinion that the great increase in legislation and the growing complexity of modern life have created a situation in which increasing numbers of people must have recourse to professional legal assistance.*

*It follows that a service which was at best somewhat patchy has become totally inadequate and that this condition will become worse. If all members of the community are to secure the legal assistance they require, barristers and solicitors cannot be expected in future to provide that assistance to a considerable section as a voluntary service.”*<sup>106</sup>

152. We urge the MoJ to heed the words and lessons of the past in conducting this review of civil legal aid. The cost of further inaction is far too high a cost to pay.

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<sup>105</sup> Young Legal Aid Lawyers, [Submission to the Justice Committee Inquiry](#), November 2020

<sup>106</sup> Rushcliffe Committee, [Report of the Committee on Legal Aid and Legal Advice in England and Wales](#), 1945, p.23



## Appendix - Selection of previous YLAL publications

YLAL survey, <a href="#">Paralegals Working In Legal Aid: An Unhealthy Dependency?</a>	February 2008
YLAL submissions <a href="#">The Lost Generation in the National Crusade on Social Mobility</a> : Response to the Government consultation paper :New opportunities: Fair Chances for the Future (January 2009) and The Panel on Fair Access to the Professions report: Unleashing Aspirations (July 2009)	February 2010
YLAL and Haldane Society of Socialist Lawyers commissioned inquiry, <a href="#">Unequal before the law? The future of legal aid</a>	June 2011
YLAL report, <a href="#">Nowhere else to turn: The impact of legal aid cuts on MPs' ability to help their constituents</a>	March 2012
YLAL <a href="#">submission to the Public Accounts Committee</a>	April 2013
YLAL report, <a href="#">Nowhere else to turn: one year on</a> , A follow up study addressing the impact of legal aid cuts on MPs' ability to help their constituents	August 2013
YLAL, report on social mobility and diversity in the legal aid sector, <a href="#">One Step Forward, Two Steps Back</a>	October 2013
YLAL, Submission, <a href="#">Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014</a>	March 2014
YLAL <a href="#">submission to the Bach Commission</a>	May 2016
YLAL report, <a href="#">Social Mobility in a Time of Austerity</a>	March 2018
YLAL <a href="#">Submission to the LASPO Post-Implementation Review</a> of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012	September 2018
YLAL <a href="#">Response to Civil Justice Committee Rapid Consultation on Remote Justice</a>	May 2020
YLAL report, <a href="#">Social Mobility in a Sector on the Brink</a>	October 2022
YLAL <a href="#">statement on 10 years of the Legal aid, Sentencing, and Punishment of Offenders Act. 2012</a>	April 2023
YLAL & Public Law Project paper, <a href="#">Overstretched &amp; unsustainable: a case study of the immigration and asylum legal aid sector</a> , Dr Jo Hynes,	April 2023
YLAL <a href="#">Response to The Law Society Green Paper</a> : 'Proposals for a 21st Century Justice system'	January 2024