

Public Accounts Committee

Oral evidence: Value for money from legal aid, HC 481

Monday 25 March 2024

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Public Accounts Committee Members present: Dame Meg Hillier (Chair); Olivia Blake; Anne Marie Morris; Sarah Olney; Sarah Owen; Matt Warman.

Justice Committee Member present: Sir Robert Neill, Chair.

Gareth Davies, Comptroller and Auditor General, Kemi Duroshola, Manager of Value for Money, National Audit Office, Jenny George, Director, NAO, and Marius Gallaher, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-91

Witnesses

I: Antonia Romeo, Permanent Secretary, Ministry of Justice; Jane Harbottle, CEO, Legal Aid Agency; Jason Latham, Development Director, His Majesty's Courts and Tribunals Service; and Jerome Glass, Director General Policy and Strategy Group, Ministry of Justice.

Report by the Comptroller and Auditor General
Government's management of legal aid (HC 514)

Examination of witnesses

Witnesses: Antonia Romeo, Jane Harbottle, Jason Latham and Jerome Glass.

Chair: Welcome to the Public Accounts Committee on Monday 25 March 2024. Today, we are looking at legal aid and what value for money the state is achieving from it.

The Government have a duty to fund legal advice for the most vulnerable in society. The Legal Aid, Sentencing and Punishment of Offenders Act 2012, or LASPO as it is often colloquially referred to, was implemented in 2013. LASPO significantly reduced the scope of legal aid in England and Wales.

The Committee looked at that back in 2015, and we felt concerned then that many areas did not have access to legal aid. In the report that we published at the time, we also expressed concern that there was not enough interest in the MOJ in the knock-on costs of its reforms across the public sector and in other parts of the system.

We now have another National Audit Office Report looking at this issue, which we are examining today. We are keen to hear from our witnesses how they think legal aid is going and whether it is achieving the value for money that was intended.

I put on record my thanks to all those who have submitted evidence—we have had a really useful slew of evidence from various contributors. Before I introduce our witnesses, are there any declarations of interest?

Sir Robert Neill: Just for the record, I am a non-practising barrister and a former consultant to a law firm.

Q1 **Chair:** Sir Bob is guesting on this Committee today as Chair of our sister Select Committee, the Justice Committee—a very warm welcome to Sir Bob.

Our witnesses today include the permanent secretary from the Ministry of Justice, Antonia Romeo—welcome back. She is joined by Jane Harbottle who is the chief executive officer of the Legal Aid Agency and a first-time witness at the Committee; Jerome Glass, the director general of the policy and strategy group at the Ministry of Justice—the titles seem to keep changing; and Jason Latham, the development director at His Majesty's Courts and Tribunals Service. A warm welcome to you all.

Before we go into the main session, I just want to pick up on some issues on court reform with the permanent secretary. Nick Goodwin, the chief executive of His Majesty's Courts and Tribunals Service, wrote to us in



HOUSE OF COMMONS

late February about changes to the programme. One of the most concerning things he wrote to us about was the implications for the functionality and the user experience for staff of not going ahead with phases 2 and 3 of the common platform. What are the implications if you are now axing phases 2 and 3 of the common platform?

Antonia Romeo: First, thank you for having me today. The purpose of the reset, following which the letter came to you, was essentially to rescope some areas, including the common platform, where it was felt most appropriate to do so, largely in response to feedback from staff and users.

In practice, for example, the plan had been to roll out the common platform throughout all Crown courts and to use that, as it were, as the top-level portal. Now, we are going to be using the digital case system as the thing that sits on top of the common platform; users already know it, and it has been in place since 2016, although Jason will correct me if that is not quite right.

The idea was that we had had a lot of feedback, and you will recall from previous sessions in front of this Committee that we have not necessarily always, throughout the programme, listened to feedback enough. So this was a specific response to some of the feedback to try to improve the service for users of the system, and to ensure that we did not lose the functionality but actually made the system easier to use. Also, we were then not trying to roll out yet another change for users, when there is already a lot of change happening in the Crown courts.

Chair: But phases 2 and 3 are just not going to go ahead at all now. That is what the letter is saying.

Antonia Romeo: Jason might want to talk about some of the detail. For the last mile, if you like, we are not going to go ahead in the way we had envisaged; instead, people are going to be using the digital case system. What that means is that, instead of replacing it with the common platform, we will have to do additional work to manage the interface between the digital case system and the common platform. There are different types of work so that you get the same outcome, but you are not replacing it in the same way as had originally been envisaged.

Q2 **Chair:** Maybe Mr Latham can help. Will there be a procurement process for the new work that is going to have to take place to patch those two systems together?

Jason Latham: The digital case system has been in place since circa 2016. Releases 2 and 3 were intended to provide the same functionality, but within common platform. We decided to de-scope it, so that we can concentrate on stabilising the system and responding to change requests from staff. The courts are well versed in using the digital case system, and the judges are very supportive of the approach that we have taken. There will be further work to look at how we can integrate it further, so that it works more automatically with the common platform. But to all intents and purposes, the digital case system has been working with the common



HOUSE OF COMMONS

platform during the whole of the roll-out of the common platform system across the Crown courts.

Chair: So what you are saying is that you are stopping doing something, but what is replacing it is already working.

Jason Latham: Yes. Basically, it is working very well, and the judges are very supportive of it, as are our other users, so we decided to re-focus efforts on change requests coming from staff and on fixing some of the technical defects in the common platform system so it can work faster and be slicker for our staff.

Q3 **Chair:** Okay. What about the value of the benefits of the programme, Ms Romeo? Have they been reduced as a result of this change?

Antonia Romeo: Well, yes. As you will know, the overall cost of the programme has not changed since the 2021 business case, or that has slipped to the right. Inevitably, the slippage of benefits to the right means that the value is brought in less quickly. Also, a lot of the value obviously comes from automating, and some of that will not be captured in the same way. We will not be getting the same value, because we will not be automating to that extent, and we are still working out what that means in terms of actual benefit delivery over the next year.

Chair: Just to be clear, it has now been officially de-scoped, and there are no plans to go for the all-singing, all-dancing approach that was proposed originally.

Antonia Romeo: That is correct.

Chair: And that is now the settled position.

Antonia Romeo: That is the position as signed off by the Lord Chancellor and the Lady Chief Justice, yes.

Q4 **Chair:** Okay. We will leave it there for now. Our sister Committee will no doubt be coming back to this, and we may well in future as well. Thank you for that.

We move into our main session, on value for money from legal aid. I want to start with access to legal aid, particularly geographically. The procurement areas for legal aid have been expanded over the years, and that can mask the ability of people to access it. Some useful maps on pages 36 and 37 of the National Audit Office Report give an example of the challenges. Why was the decision made to enlarge the procurement areas for legal aid, Ms Romeo? Were you aware of the risks of doing that?

Antonia Romeo: I think you are talking about civil legal aid.

Chair: Yes.

Antonia Romeo: By and large, the basic design of the procurement areas has stayed the same since 2010. Where we have made changes, we have made them to align and to basically make the thing more effective. For example, family procurement areas were changed in 2018, when HMCTS

rationalised the London family courts in three locations. We then aligned the legal aid procurement areas with those.

Jane can give more detail on exactly how the areas align and which legal areas align with what, but obviously it is quite different depending on whether you are thinking about criminal, civil or family. We are always trying to do alignment in the smartest way, because you would want to align as much as possible. If there is rationalisation in one area, we would rationalise the legal aid procurement areas as well. I do not think that it has triggered a particular problem. Change always creates some risk, but we see that alignment as an improvement, not as something that just generates risk with no benefit.

Q5 **Chair:** Ms Harbottle, does it not mask large gaps in provision, because the areas are so big?

Jane Harbottle: Thank you for inviting me to the Committee today. I would say that our current model relies on a vast range of private practitioners and the not-for-profit sector, who want to do legal aid work. I think it is right, in broader terms, that the Report highlights that we do not compel people to do work through their contract. However, we do not place any limits on the number of people who can have a contract. So as long as they meet the quality requirements, they effectively get a licence to carry out legal aid work in the localities that they wish.

As the permanent secretary said, our procurement areas were largely devised in 2010, which was slightly before LASPO. At the time, of course, the general considerations, and we keep them under review, were that, where possible, services should be delivered locally. However, we then need to balance sufficient work volumes with access to a quality service. Then, as the permanent secretary said, we align the procurement areas with other associated services. I can give you a little more detail on that—

Q6 **Chair:** Give us a specific example just so that we can understand.

Jane Harbottle: For example, mental health procurement areas were amended in 2014, which was when the NHS moved away from the former strategic health authorities. Community care in the past was very aligned with social welfare law, which was a huge category of law, most of which was taken out of scope as part of LASPO. So there were lots of integrated services and coupling, at the time of community care, with those services. Obviously, once that was taken out of scope, we reviewed the community care boundaries, and we decided that the volumes of work meant that they were more akin to lower-volume categories such as public law, claims against public authorities and clinical negligence. So we reduced the number of access points in the procurement areas then.

Probably the other important one is criminal legal aid, because criminal legal aid and access to it are obviously based on what the police tell us they need in order to have enough providers in their custody suites day to day, and also on what the magistrates need to have on the ground to deal with court duty matters each and every day. They will inform us, we work



HOUSE OF COMMONS

locally with those entities, and we then produce the duty solicitor rotas that service the police stations and the courts.

- Q7 **Chair:** There is a difference, though, isn't there, with criminal, where you really need to see someone face to face if you are in a cell? At that point, the duty solicitor would have to be available.

Jane Harbottle: Yes. They are available. They will get a call—the police will call a duty solicitor call centre, and that will be deployed to the duty solicitor.

- Q8 **Chair:** That is quite a different service that people are providing, which needs to be geographically spread across a wider procurement area. Are you confident that you are getting that geographical spread across the large procurement areas?

Jane Harbottle: By and large, for criminal legal aid—we will start with that—all the duty solicitor requests, or all the slots that are requested, are covered. That is not to say that we don't see pressure in more of the rural areas, where perhaps the volumes of work are not there.

We also have two schemes that are being covered through adjoining solicitors in different procurement areas. To give you the example of Skegness, there is no magistrates court there, but there is a police station, and providers in Lincolnshire are helping to cover that scheme. Where we do see gaps like that, we are obviously in close contact with Jerome and the policy team to see what the longer-term options may be on those schemes.

In fact, we have just dealt with a similar issue that we had in Llanelli, in Wales, by working with Jerome's team and agreeing with Ministers that we will take a different approach, which made that scheme still viable for a particular provider.

- Q9 **Chair:** In the past when we have looked at this, there have been big gaps in areas, and now the procurement areas are bigger. The concern is that you can have a lot of providers in a procurement area and they could be weighted to one area. You have given the example of Skegness, where there is a gap, and of what you are trying to do there. But how many other areas are you aware of from the centre—we will come on to this in a bit more detail in a moment—that have gaps? I might ask colleagues to come in on their own areas.

Jane Harbottle: There are 134 procurement areas in total across the country—I think the map in the Report shows housing and debt—and we currently have nine areas with no face-to-face advice. There are 105 HLPAS schemes. This is a new initiative, which has been in place since August 2023. Jerome may want to say a bit more about the HLPAS scheme, but, effectively, anybody can get social welfare law advice pre possession hearings, and on-the-day court advice in their local county court. On the HLPAS schemes, we have a gap in two areas. Those are Wigan and Crewe, and they have no on-the-day court advice. However,



HOUSE OF COMMONS

individuals can also seek remote advice through other providers or through providers in neighbouring areas. I have covered the—

- Q10 **Chair:** How do they know that they can get that other advice? If they cannot find advice locally, how do they know that they can get it remotely?

Jane Harbottle: Specifically in Wigan and Crewe, we have done a lot of engagement with the local courts so that court staff are aware that clients can seek early legal advice when they turn up on the day. We also have our telephone service, which provides remote advice. It is well established, and well advertised on the back of the court information and documentation as well.

Chair: On the geographical disparities, I am going to come to Mr Matt Warman.

- Q11 **Matt Warman:** By happy coincidence, the example that you have mentioned is in my constituency. If you look at the maps in figure 9, showing both the distance and the increase in distance, a constituency like Boston and Skegness is as dark as it can get, when dark is bad. You mention that project to fill in a specific gap, but I wonder how aware you are of other, equivalent gaps, because that is one service rather than all of them. And when you consider how urgent it is to fix those gaps, how much do you consider, when it comes to remoteness and the suggestion that people could do this online, the vulnerability of constituents and the provision of broadband?

Jane Harbottle: Sorry, could you just repeat the first part of the question for me? I only got the “vulnerable” bit.

Matt Warman: You talked about filling in a gap in one service, in the example that you gave. How long were you aware of that gap being there, and what about the gaps in other, equivalent services where there is not an easy fix?

Jane Harbottle: Across the country, every single legal aid provider has a local contract manager. The contract manager’s function is to provide a degree of assurance against the contract—are they meeting the measures that we set out?—but also to understand the provider’s longer-term business plans, any challenges that they are facing on the ground and any local intelligence from, say, other CJS partners or wider partners in that particular locality. They also, of course, take intelligence from the providers themselves and what they are seeing in their own particular office.

All that intelligence is then fed back to our commissioning team, because one of the main levers we have as the agency—obviously it is Ministers who are responsible for setting legal aid fees and so on, as I am sure most of you know—is to instigate a new tender in that particular area. Or we may look at neighbouring schemes, and we will consult and engage with the providers in those neighbouring schemes to see whether they feel they can cover that particular work. If they can, great. If not, we clearly need



to escalate this to policy colleagues as well, or maybe utilise, in relation to crime, the public defender service to do that.

- Q12 **Matt Warman:** But ultimately, how bad does it have to get for you to trigger that kind of process? Could you give us a flavour of what that might mean in practice?

Jane Harbottle: In Skegness, we knew we were going to lose the provider, so we proactively engaged with the providers in the neighbouring schemes to ensure that all the duty rota slots were covered. So, if you are talking about crime, we have not lost any duty slots through going to—

Chair: But you will have people travelling further afield—Lincolnshire is quite big.

Jane Harbottle: Yes, people will be travelling further afield. Obviously, I can't change the payments for travel—they are set in the regulations—so we have to get the agreement of the local or the nearest scheme area. We feed that intelligence back to policy colleagues; some of that was picked up as part of the criminal legal aid review, which Jerome might want to talk about.

- Q13 **Matt Warman:** I just wonder how typical that ability to step in before something falls over is nationwide.

Jane Harbottle: So far, we haven't had any gaps, and we are constantly monitoring the market. As I said, it is particularly relevant to keep our finger on the pulse in the more rural areas, so Barnstaple is another example.

Jerome Glass: I appreciate that you are asking a local question, but can I make a national point? As Jane was saying, when we are aware of these sorts of problems, what we do is look at the fee schemes, which we will come on to. We have just reviewed the criminal legal aid schemes and we have uplifted them by 15% overall.

In particular, what we have done recently—in January this year—is launch a consultation on crime lower, so basically the magistrates and police station schemes. We are trying to uplift the police station schemes in particular because, as Jane was saying, that is where we are aware that there is a problem. So they won't be getting just a 15% increase; subject to consultation, they will be getting a 30% increase in fees.

Matt Warman: You only have to look at the map to see that although it is a local question on one level, there are a lot of local examples.

- Q14 **Chair:** Exactly. What about the cost of travel, Mr Glass? That is obviously laid out. Is there any prospect of changing that? If there is a choice between the local area or Skegness, it is a no brainer. Looking at the bottom line, they would look at staying in the local area if there was a binary choice between the two on any particular night in question.



HOUSE OF COMMONS

Jerome Glass: That is not something we are looking at in the context of the criminal schemes, although it is something we have done recently on the immigration schemes.

- Q15 **Chair:** We will come to that. So you are not looking at it for the criminal schemes. Have you done any monitoring or modelling to see who would get the covering provided if someone in a police cell in Skegness and someone in another part of Lincolnshire both needed a duty solicitor?

Jane Harbottle: All the calls go through to the duty solicitor call centre. Those calls must be deployed in a timely manner. Then, as part of our contract requirements, first contact must be made with the client within the first 45 minutes. That could just be a quick telephone call, and then they obviously need to attend when the police are ready to interview.

That scheme is interesting because we initially agreed that the Lincolnshire providers would just work as a back-up system and be on call, because some of the work is quite seasonal in that particular area. They said that, to help with their business planning, they would prefer to be rota-ed on to specific slots on specific days so that they could work out the best way of covering the Skegness scheme as well as their other duty schemes.

- Q16 **Chair:** So that is partly how you get round it, because they are rota-ed on.

I want to go on to the immigration advice. As a result of the Illegal Migration Act, you put up fees by 15% for areas covered by the Act to attract providers. Can I just check with Mr Glass or Ms Romeo whether that is coming from the main LASPO budget?

Antonia Romeo: No, because it is a consequence of a Home Office departmental policy, so we would expect the money to be delivered in the usual way for the downstream Department.

Chair: So it will be transferred from the Home Office, and the Home Office will fund the 15% completely?

Antonia Romeo: Yes. I don't know what the original source of the money will be, but we are expecting to be given the money.

Chair: Basically my question was whether it is chipping away at—

Antonia Romeo: It is not crowding out other funding. That's right.

- Q17 **Chair:** Okay. Has that worked? Has that been attracting providers?

Antonia Romeo: Yes, it has.

Chair: Mr Glass?

Jerome Glass: Obviously, the Illegal Migration Act has not yet been implemented so we haven't yet seen the work come through, but there was a very strong sense from the sector on our initial engagement. We did a lot of engagement in the run-up while we were designing it, and there was a strong sense from the sector that it would help ensure sufficient



HOUSE OF COMMONS

provision for the increased amount of work that we are expecting under the Illegal Migration Act.

- Q18 **Chair:** When are the taps going to turn on? As you say, the Act has not yet been implemented, but you obviously have to work with providers before that point. You have had some engagement. Could you talk us through where that engagement has got to, what the take-up will be and whether there will be deserts?

There have been desert areas for immigration advice for a long time in this country. In parts of Wales, you couldn't find an immigration lawyer 14 years ago; I think it is much the same now, looking at the maps. How will you ensure that you fill those gaps? How far have you got with the people who you already engage with?

Jerome Glass: There are two things there. First, Jane might want to talk about the specific areas of the country where we know there are issues with immigration provision, which I think are particularly in the south-west.

That said, what we actually found overall—again, this is largely Jane's contract running procurements—was that we have seen an increase in the number of providers over the last year, particularly for immigration, so we are relatively confident that through this procurement and the increase in the fees, we will have the coverage. That is of course dependent on the numbers, but so far, in terms of the modelling we have been doing with the Home Office, we are reasonably confident that the 15% plus the additional procurement that we have done will mean that we should have the coverage. I do not know if Jane wants to pick up on the south-west.

Jane Harbottle: There are a couple of things. We currently have a live tender out and being advertised at the moment. Early indications are that we are getting a good response to that, but it is clearly early days, and I cannot go into the individual numbers. We did open up the tender to civil providers in 2023.

As a result of that, we had 100 additional providers wanting to do work in different categories of law across 216 offices. Some 40 of those providers were immigration, and we also got seven additional providers to cover work in the immigration removal centres. As I said, we are seeing a fairly healthy response to the tender that is out at the moment, but that needs to work its way through, and we need to verify all the information and so on.

In the south-west specifically, we have seven immigration providers. We were notified—

- Q19 **Chair:** When you say the south-west, can you give the people who are listening the geographical spread? Presumably it is across Cornwall and through Devon.

Jane Harbottle: Cornwall, the Bristol area and Devon, yes. We have seven currently. A large provider, though, withdrew their services not too long ago, and the existing providers told us that they were struggling with



HOUSE OF COMMONS

capacity. What we have done is essentially, for want of a better word, launched a matching service, if you like, so that those providers that are at capacity will refer to another list of 31 providers we have secured across the country that have indicated that they have capacity to take on work from the south-west.

Chair: That means remote.

Jane Harbottle: Yes, that does mean remote, albeit the providers in those areas in the south-west will hopefully prioritise people who really need face-to-face then refer people remotely. It indicates that we have a healthy interest in doing this work, but there is a slight mismatch in terms of where some of the providers choose to base themselves and the amount of work coming through.

Chair: It is quite a significant issue, which my colleague will come on to further.

Jerome Glass: Could I add just a couple of other things that we have done? You asked about where we are with the providers. One of the most positive things that we have done recently, for example, is that we have agreed a contract with the Law Society in which we will pay £1.4 million to meet the costs of accreditation for new immigration asylum lawyers. Again, that is us trying to build the market, because we heard from them that there was a particular issue with the trainee contracts and so on, so it is about trying to pay for that on an ongoing—

Chair: And the MOJ is paying for that.

Jerome Glass: That is the same funding that the permanent secretary talked about.

Q20 **Chair:** This is my final question before I turn to Sir Bob Neill. In terms of the funding that the Home Office will provide, is there a cap on it? It could be a lot of money, but is there any point at which that tap runs dry?

Antonia Romeo: They are essentially funding the downstream consequences of their policy. We have given them our estimates of what we think the amounts will be, and we will be watching and seeing. There is only so much—in practice, it will all depend on their assumptions in terms of the volumes, and we can apply our algorithm to those then give them back data for the estimate.

Q21 **Chair:** Just to be clear, the MOJ is not on the hook for any of this, whatever happens. They will not hold you to your modelling and say, "You told us this much, and it is more; you now have to pick it up." Just to be clear, it is all through the Home Office or the Treasury.

Antonia Romeo: Obviously we work very collaboratively with them—

Chair: I'm sure that you are collaborating, but in terms of your budget.



HOUSE OF COMMONS

Antonia Romeo: We do our bit, but in terms of the budget, the estimates of how much it will cost depend crucially on things such as volumes and flows into the system, about which they are the experts.

Chair: In accounting terms, this will be in the Home Office accounts, and will it be in your accounts, too, as receipts from the Home Office spent on legal aid?

Antonia Romeo: In accounting terms, the principal accounting officer for everything that flows from the Illegal Migration Act is the permanent secretary of the Home Office. Obviously there will be some things, such as appropriate spend, that, once out and in our budget, will fall to Jane as accounting officer and I as PAO of that bit of the spend, but the dependency on the volumes and things that flow in is held elsewhere.

Q22 **Chair:** It is just that we will want to follow through where the money goes and how it is spent. Will we need to look at both sets of accounts to understand this?

Antonia Romeo: We will definitely be spending some of it, so you might want to look at our accounts, but the agreement at the outset of the policy was that the perm sec of the Home Office was essentially the accounting officer for the spend associated with this Home Office policy.

Chair: We are looking at some of these costs—not directly on legal aid—in two or three weeks.

Q23 **Sir Robert Neill:** Ms Romeo, your predecessor, Sir Richard Heaton, expressed the view that he wanted the Ministry of Justice to be the most data-driven Department in Government. How far have you got along that track?

Antonia Romeo: You will have heard me say similar things, Sir Bob, when in front of both this Committee and your Committee.

Sir Robert Neill: What is your take for this Committee?

Antonia Romeo: I think we have got quite far in different areas. Moving off legal aid for a minute, we have done quite a lot in terms of joining up data under things such as the BOLD scheme, which is joining up data across the whole criminal justice system. That sort of thing is essential to be able to track flows through the system—offenders and so on.

I have also recently appointed a director general to lead on our service transformation, which is going to look crucially at using data and digital as a way of digitising our services. As you know, we have a large number of services that we would not consider to be truly modern at the moment. That process is in train and I am quite ambitious about it, but as we have already heard in relation to the HMCTS reform programme, being too ambitious at the outset on the speed at which you can transform things digitally is unwise.

Q24 **Sir Robert Neill:** Can we you bring back specifically to what data is held around legal aid, for example? We have heard about gaps. What data do



HOUSE OF COMMONS

you hold that indicates why those gaps exist, and who holds it? Is it the Ministry, or is it the agencies? Is it the Legal Aid Agency? Is it HMCTS?

Antonia Romeo: It is all the above, in a way. Let me say some things about the overall data picture. Obviously, there is data on a large number of things. We can come on to the consequences of LASPO, what happened on scope and what happens on eligibility.

Q25 **Sir Robert Neill:** You can do that in a minute, but I am just interested at the moment in the position around access to justice points. Legal aid was taken out of scope in a lot of areas.

Ms Harbottle might be able to help us with this. What data do you collect as to the distance people may now have to travel to get face-to-face legal advice? What data do you collect on the distance that a duty solicitor may have to travel to do a call at a police station? What data do you collect on the distance they may have to travel to the nearest available court? How do you collect it? That must be important.

Jane Harbottle: I will talk more broadly about data.

Sir Robert Neill: How do you collect it, for a start? Do you?

Jane Harbottle: In the agency, we will collect data at the point at which a client is eligible for legal aid, a provider opens a new matter start or a provider bills us for payment.

Sir Robert Neill: I have got that. I asked you specific questions. Can you answer those specific points, please?

Jane Harbottle: In relation to distance travelled?

Sir Robert Neill: Distance travelled, for example, yes. How much longer is Mr Warman's constituent going to have to go? How much longer will that duty solicitor have to go? How much further will they have to go for a court hearing? They are very specific. You must have data on that, surely.

Jane Harbottle: We would map data and get the data where we saw a particular gap in services such as in Skegness and Lincoln.

Sir Robert Neill: Do you do it routinely, then?

Jane Harbottle: We do not do it routinely. We monitor the number of contracts we have against the procurement areas that we set ourselves, and we look at the provision and the number of contracts in each of those particular procurement areas.

Antonia Romeo: Could I add something? We are very careful not to put too much of a burden on the providers. We have got to be a bit careful about giant data requests to all the providers that say, "How are you finding this, that and the other?" This is broadly done within the work that the Legal Aid Agency are doing in monitoring provision.

Sir Robert Neill: But you would surely want to know those anyway, to know the impact of your policies.



HOUSE OF COMMONS

Antonia Romeo: We are ensuring that we have provision. Jane is monitoring exits, as described, and provision.

- Q26 **Sir Robert Neill:** But that is missing the point, isn't it? It is not about the provision; it is about the impact of the policy. What do you collect on that?

Antonia Romeo: Do you think providers would welcome us asking them for a lot of information, which they would have to provide to us? Jane is trying to collect the data at an overall level, rather than go to—a lot of them were collected, anyway. That is, the mileage and time clients—

Sir Robert Neill: They will be putting it in their claim forms, for example. It will be there.

Antonia Romeo: Well, indeed, so that is collected. If they are already providing it—

- Q27 **Sir Robert Neill:** So who pulls it together to give you an overall picture?

Antonia Romeo: They are providing it to the Legal Aid Agency.

Jane Harbottle: We have datasets on the time taken or travel taken, and so on. All that is used to help inform policy decisions and policymaking.

- Q28 **Sir Robert Neill:** What do you do, Mr Glass, when you get all this data?

Jerome Glass: As I was explaining earlier, that is part of the backdrop when we look at all the various options available to us, be it fees, changing scope, and all that sort of stuff. That data fed into the post-implementation review for LASPO. It is part of the analytical annex to the criminal legal aid independent review, and it feeds into how we design the HLPAS scheme. Critically, it will also feed—this is an important point—into the review of civil legal aid, where we have done a provider survey specifically asking providers exactly what their views are on the future provision. It is all part of the picture for how we design the policy.

It is worth saying that we have very good data on the number of providers and the number of officers. Thanks to the work that Lord Bellamy did in his review, we have reasonably good data now on the number of barristers and the impacts of the number of barristers. It is a relatively rich data picture, all of which is public.

- Q29 **Sir Robert Neill:** What is being done to pull it together, analyse it and make it available in a more digestible form, so that you can be scrutinised on it?

Antonia Romeo: Of course, the source for all that data that Jerome described is the Legal Aid Agency, which has given you these maps telling you how far people are having to travel in different areas. That is exactly the data.

When we get all that data, Jerome's job—which he is about to tell us—is using that to inform policy, when Ministers are making decisions about policy. For example, when considering where we might need to raise fees,



HOUSE OF COMMONS

or what we want to do in response to certain things in criminal or civil, the data is informing that evidence-based policy.

- Q30 **Sir Robert Neill:** I understand that bit—you are trying to pull it together. But Mr Latham, you will be collecting a lot of data. For example, you must have data on how many cases may be delayed because of travel time by the solicitor or the barrister getting to court. It may have to be put back in the list. You may have data on how many people ask for a case to be stood out to get legal representation because they have not had a chance to get it beforehand. What do you do with that data?

Jason Latham: For each jurisdiction, a range of data is collected. If we take the Crown court, Sir Bob, you would be quite right there. We would collect quite detailed information relating to why a case is vacated, stood down or ineffective, and what the cause was for that—whether it was relating to the availability of a defence advocate or prosecution advocate, or whether there was some logistical impediment to somebody arriving at the courts in time, which can also often be the defendant. All that data and information is collected.

Within HMCTS, we use that data to look at prevalent reasons that are driving adjournments, to see where we need to intervene to either improve things or work with different parts of the system to drive improvements. Of course, the data is available to other parts of the Ministry as well, when it helps in forming policy.

- Q31 **Sir Robert Neill:** I presume that what happens to it, be that in other parts of the Ministry, is not something you deal with. Obviously, you just pass it on.

Jason Latham: Yes. We have the data available, Sir Bob. We collect all the data and put it into what is called a strategic data hub. The strategic data hub is then able to produce lots of different data outputs across the Ministry, so it can be used for a number of reasons. As a resource, it is available to all the analytical teams across the Ministry. It is not just housed within HMCTS and for our own purposes.

- Q32 **Sir Robert Neill:** Ms Romeo, can I come back to you? Either yourself or Mr Glass referred to the data maps we have a minute ago.

Antonia Romeo: We were just pointing out the maps in the—

Sir Robert Neill: I remember you holding it up for us a moment ago. Can we be clear that the distance analysis behind those maps was carried out by the National Audit Office, and not by the MOJ?

Antonia Romeo: It is based on Legal Aid Agency data.

Sir Robert Neill: But the National Audit Office had to do the work to produce the maps—that is what I am saying. Might it be a good idea to produce that data yourselves, in exactly that sort of form, as a matter of transparency?

Antonia Romeo: I don't know if we do or not already.



HOUSE OF COMMONS

Jane Harbottle: Every quarter we produce what we call a capacity review, which shows on a map the number of providers that have contracts and where they are located. That is done on a quarterly basis, and that may trigger some further conversations, either with policy colleagues or local providers. There is a specific forum where we sit with the policy team and discuss those maps and the provision of supply.

- Q33 **Sir Robert Neill:** You made an interesting point a little while ago about how, in one area, a major supplier had withdrawn from a contract, and some of the others had capacity issues. What do you do with the data you have? What data do you get around that? What do you do to find out why they withdrew, for example, or what the capacity issues are? What do you then do with that information?

Jane Harbottle: We gather that from conversations with their local contracts manager. We know, specifically for that particular provider, that it was about their inability to bill work as a result of some processing backlogs—not the agency backlogs, incidentally. They felt that it wasn't commercially viable for them to continue.

Chair: When you say processing backlogs, is that Home Office processing backlogs?

Jane Harbottle: This is Home Office, yes. This is fed through to the contract managers, and of course we feed that information back to policy colleagues, who are obviously in discussion with the Home Office as well.

- Q34 **Sir Robert Neill:** Did that data ever get to the Home Office, I wonder? If it is the cause of the process problems, it is pretty obvious that you want to join the data up, don't you? Do you have any idea about that?

Jane Harbottle: I'm not—

Antonia Romeo: They will know about their own backlog.

Sir Robert Neill: Is it wise to assume that, Ms Romeo?

Chair: Do they know the consequences of their backlogs?

Jane Harbottle: There have been a lot of meetings with the Home Office to discuss immigration provision, so we did make them aware of this issue, and the general tensions in immigration.

- Q35 **Sir Robert Neill:** Okay. I know that the Legal Aid Agency monitors new cases to try to capture the volume of work that providers take on—I have got that bit. Do you collect any data on reasons why they are not taking cases on? Do you try to probe into that? Is it lack of demand or not having the capacity? What do you do around that?

Jane Harbottle: Yes, we do. For example, I think the NAO indicated in figure 10 a number of offices who were not taking on legal aid work. Actually, by our own definition, this does not include providers who are taking on low volumes of work, so those numbers look quite different when you add in low volumes of work, or the truly inactive offices who are



not taking on any work in any category. The last deep dive that we did on immigration¹ was last year, and the providers we spoke to said that in 29% of the cases they did not take on it was because the client was not eligible for legal aid. The next area was that they said there was low client interest or low footfall through their office—that was 25%. Other reasons cited were temporary issues because they were finding it difficult to recruit staff, and 13% thought that the work was not profitable or viable.

Q36 Sir Robert Neill: Is that sort of information routinely fed up to Ministers?

Jane Harbottle: Yes, it is. Actually, it is that sort of information that was fed into policy and then up to Ministers that resulted in things like the HLP scheme. All the intelligence that we get on the ground is fed up.

Antonia Romeo: To answer the question about the overall picture, Jane and her team are using the tactical information all the time to do the things that they can to worry about exits and make sure they are standing up providers to feed into another area, and so on. Then what is inevitably longer term is the data being fed up to then become part of policy formulation, which is for Ministers to decide on.

Jerome Glass: If I could add to that, it is not only fed up to Ministers but published. In January this year, we ran a huge survey of all the civil legal aid providers, which we published. It is public; you can look at the data. We had 228 organisations respond to it. I would say that we are incredibly curious. In fact, we spend a lot of time trying to work out, as part of the civil legal aid review that we are doing, what exactly is going on in the sector and how to make sure it is sustainable, because that is something we really care about.

Q37 Sir Robert Neill: Do you reckon we are going to see any major changes to the way we handle data within the MOJ, Ms Romeo?

Antonia Romeo: Overall?

Sir Robert Neill: Yes.

Antonia Romeo: Well, I hope so. Again, one has to be a bit careful about going from flash to bang too quickly, but it is a huge part of what we are trying to do—partly because it is the only way to take money out of the system. In the fiscal context we are in, we are going to have to keep automating and modernising to try to become more productive and more efficient, and a lot of that will be about the better use of data. The problem we have in large areas is that the actual capturing of the data is hard to do. In a way, this conversation has evidenced that when you are capturing data from many different sources—individual firms, individual providers and individual users—you have to do quite a lot of it to get something useful out of it.

Q38 Sir Robert Neill: All your team have worked with Dr Natalie Byrom, who

¹ The Legal Aid Agency subsequently clarified that the last deep dive was on housing. See [letter to the PAC dated 3 April 2024](#).



HOUSE OF COMMONS

is one of the leading experts in this field. I see that she has just been asked by Justice to head up a new inquiry into the use of data in the criminal justice system—I think that was announced earlier today. Can I assume that the Ministry will be co-operating with that and will be very happy to work with them to see what can be found?

Antonia Romeo: Yes, hence the announcement. I must say that we very much welcome people engaging with us on the data, which is why we stay engaging with them and make announcements such as that.

Q39 **Matt Warman:** To come back to a question I asked earlier, when you talked about greater automation and greater consolidation driven by data, does that data include information about the relative deprivation of areas and the relative provision of broadband? You are dealing with different people, fundamentally.

Antonia Romeo: It is a good question, and Jane will know more about this than me. It is not so sophisticated: there is not a data-adjustment algorithm that looks at need in various areas and adjusts the data as to whether somebody could afford to go as far as somebody else. I think that is broadly taken into account, however—probably in a more qualitative way—when Jane is having conversations with providers, because her team will know that in a certain area, there are more likely to be vulnerable users, for example, than in another area. We would definitely be taking that into account, but I do not want to overstate the sophistication of that.

Q40 **Matt Warman:** When you look at those maps, the coastal areas, for instance, are massive areas of deprivation that are well known within Government as a whole, yet people in those areas often have the furthest distances to travel and, we know, may be the least well equipped to do it remotely. I wonder if what you are doing now addresses that historical failure and could do better.

Antonia Romeo: I will let Jane say something about that, but I will point out—we are all well aware of it already—that these are not directly employed staffing positions. We are trying to facilitate a market. We have certain levers that we can use within the context of the overall budget, which includes things such as fees in the context of the budget, which we are looking at via things such as CLAIR, but there are quite a lot of areas. Jane can be tendering or we can do things like the civil legal aid helpline, which we think is very important. But obviously, this is not a perfect picture. We are trying to use the levers that we have to ensure that we are maximising the support for those people who need it. That is the whole purpose of what we do on legal aid. Jane might want to add something on that question.

Jane Harbottle: I agree with the permanent secretary. We do not have a limit on the number of providers who can operate in any particular area, but we are reliant, as I said before, on the private sector and not-for-profit areas wanting to do work in legal aid—that is the model. Provided they pass the quality threshold, they can do legal aid.



Rural areas and seasonal demand are a particular challenge. I think what you are talking about is how we model demand, and there are three main ways—Jerome may want to come in here as well. Basically, we will forecast legal aid for spending purposes through a financial lens. A lot of that is based on, as I said before, what the courts and the police need, sitting days, police officer recruitment and trends in wider society, as well as historical demand for legal aid and how that is working its way through the system. That is done regularly—monthly—in conjunction with our finance teams, and the Legal Aid Agency and policy are also involved in that process.

Another thing is the more local things, which I talked about before, such as liaison with local criminal justice boards or liaison through our contract management resource with the various contract holders that are there, or even some local authority contacts that we have in particular areas.

The last thing—Jerome might want to come in and say a bit more on this; we touched on this in IMA—is all the ongoing policy work. There is always an evaluation of how many people we think are going to be impacted, and therefore, in IMA, do we think we have enough people in the sector to pick up this particular type of work? That is really important to me from an operational perspective, because I have to keep my operational wheels turning and make sure I'm continuing to process applications and pay bills in a timely fashion. It is essential that I do it for my own resourcing purposes, as well as for the wider market.

- Q41 **Sarah Owen:** Ms Romeo, you said earlier that change always creates some risk. I wanted to ask what you are doing to mitigate those risks, or whether you are just accepting some of them in the creation of the legal aid deserts that have been talked about already—particularly the risks for some of our most vulnerable people. I am talking about not just the geography of this, but different groups in our society, particularly disabled people, older people, people with low incomes and those who, because of the digital divide, will not be able to access this remote service as easily. Have you just accepted that there will be some people who will not have access to legal aid? Is there an acceptable level for you?

Chair: One question at a time is easier, I think.

Antonia Romeo: The first thing to say is that acknowledging risk is not the same thing as accepting risk. I think not acknowledging that there is some risk would be the worst thing to do, because it would mean we would not be looking earnestly to mitigate those risks. We definitely do not accept them, and we do seek to mitigate them.

We accept that for many people, remote legal advice is a good and reasonable way of doing it. In fact, compared perhaps with when the legal advice market was first created, it is now the way that a lot of people expect to do a lot of their interactions, so remote access would be entirely appropriate. Things like housing and debt advice have long been provided

via the Civil Legal Advice telephone service, so that is fine. But we totally acknowledge that there are some people for whom it is not appropriate.

On crime, for example, we are taking forward a remote legal advice research project to look specifically at the impact of remote legal advice in the police station in order to worry about those risks that you have noted. That project will look at the client groups for whom remote legal advice would be appropriate and those for whom it would not. It will also assess potential benefits such as increased diversity in the profession, because there are some things where, from the profession's point of view, you can actually bring more people into the market if it is provided remotely. We also want to look at uptake on legal advice and levelling up in potential areas of unmet need. We are looking at doing things like that all the time. Is there more to say on some of the specifics, Jerome?

Jerome Glass: Yes. I would say the history of what we have done since LASPO is actually sort of looking at the evidence, listening to what people are saying and then adjusting. Let me give you a very specific example. All this—all the impacts on different groups—is set out in a lot of detail in the post-implementation review. One of the things that we did as a result of that was to launch a means-test review, which was specifically intended to ensure that we were adjusting the levels of the thresholds below which you would be eligible for legal aid. We have also changed quite a lot of the scope of LASPO as we have gone through in order to make sure that we are increasing or adjusting coverage to make sure that different groups are covered, and there is a long history of that that I can go into. I would say that that has been the trend overall. It is in terms of not just provision but what we have been doing on LASPO.

Q42 **Sarah Owen:** Thank you. You talked about different groups—what different groups do you collect data for?

Jerome Glass: As part of the post-implementation review, there was quite a lot of—well, the PIR goes into the impact of LASPO for disability, ethnicity, gender and age, I think. I do not know how many other categories it has gone into, but it certainly looked at the impact of LASPO in both a legal help and a representation sense across those different groups.

Q43 **Sarah Owen:** Was there one particular group that fared worse, and that you are particularly concerned about and will focus on in future?

Jerome Glass: There are two different things. One is that because of how LASPO worked, which was to adjust eligibility for different types of case—for example, private family law—what we ended up with meant that different groups were caught in different ways. Let me be specific: for example, we found that there was an increase in the number of people who were getting legal help who were disabled. Also, pre-LASPO, 71% of people getting legal help were white, whereas that went down to 59% post LASPO.

It is quite difficult to untangle exactly what is going on there, but just in terms of the specific things we have done, one of the things that we have



HOUSE OF COMMONS

particularly adjusted all the way through is what is called the domestic violence gateway. Basically, we said that under LASPO, private family law was excluded from the scope of legal aid, with the exception of cases where there was domestic violence.

Clearly, what has happened since 2012 is, first, we have had the Domestic Abuse Act, which has broadened the definition of domestic abuse, and we have adjusted accordingly. Also, however, we have changed in response to feedback the definition and evidence requirements to get into that domestic violence gateway. For example, we changed the amount of time—it was a two-year cap, then it became a five-year cap on evidence. I think that the evidence cap has now been removed. That is the adjustment we have been making all the way through, in response to feedback that we get.

- Q44 **Sarah Owen:** A lot of importance has rightly been put on data, so I want to ask about the data that you collect for providers, in particular outsourced outreach and digital providers, and what standard you are holding them to, and expecting of them, in terms of equalities, access and satisfaction.

Jane Harbottle: Specifically, any service that is provided remotely is subject to exactly the same quality standards and scrutiny by the Legal Aid Agency as direct, face-to-face cases are. On telephone services and things, we have our Civil Legal Advice line—remote advice is often bemoaned for certain client groups, but it can be incredibly helpful and play a part. The Civil Legal Advice line, for example, has previously got quite a lot of feedback from people who are, say, in fear of being seen going into a solicitor's office in their current locality, so they welcome the telephone service. Another example is that it is very easy to match up with interpreter services on the telephone service, or to use sign language via video and so on. All those adjustments that you might expect are therefore in place—*[Interruption.]* Sorry, did you want to—

- Q45 **Sarah Owen:** I just want to pick up speed a bit with some of my questions. Would you say that it is important to have really good digital providers, in particular in areas like Cornwall, for example, which do not have as much local availability face to face?

Jane Harbottle: For our Civil Legal Advice line, 93% of people who use it would recommend it. The demographics, certainly in relation to disability, are much higher than the general population, and much higher than face-to-face advice, and it is the same for ethnically diverse backgrounds, too. That was the case even pre-LASPO.

- Q46 **Chair:** When you say “ethnically diverse”, do you look at language as well as at ethnic diversity, whether that is English as a second language or literacy?

Jane Harbottle: Yes, we do. We provide the interpreter service on the telephone.

- Q47 **Chair:** But what about when you are doing the assessment of whether it



has worked? If you speak good English and you can manage on the telephone, it might be easier than if you are from a background where your English is not so good, so ethnicity can mask the issue. Ethnicity on its own does not tell you whether someone can speak good English.

Jane Harbottle: All that work will be subject to the same quality standards—for example, peer review by another provider from a sample of cases and things like that.

- Q48 **Sarah Owen:** The reason why I asked that and specifically about Cornwall—it looks one of the worst on the map—is in the NAO Report, under figure 8 on page 34: “In some areas, such as housing, LAA has tendered for digital and outreach-only contracts where it has been unable to maintain face-to-face provision, for example, in Cornwall and parts of the Midlands, LAA does not collect reliable data on the extent to which firms are providing services remotely.” In one of the areas with least access to face-to-face services, you are not collecting data for this digital outreach.

Jane Harbottle: We collect all data on what is carried out in that locality.

Sarah Owen: The NAO Report clearly states that you are not collecting “reliable data”.

Chair: Give an exact reference—

Sarah Owen: I have—page 34. It’s paragraph 2.20.

Jane Harbottle: In those particular areas, there will be services where someone remotely from another area provides the advice, but there is someone in the locality there to help and to assist the client to do that. All the starts in those particular areas will be recorded and reported to us in exactly the normal way as they are for the rest of, say, face-to-face starts.

- Q49 **Sarah Owen:** Why is the NAO saying that that data is not reliable?

Antonia Romeo: I am not sure that we understand the point that the NAO was making. Jane is saying that we do have data on that provision, so perhaps that is a question for the NAO.

Jenny George: We were saying that the NAO does not have full data on the extent to which the firms are providing the services remotely.

Kemi Duroshola: I think it is about the proportion of the service that is being provided face to face versus remote provision, not the quality.

Jane Harbottle: Generally, where we have face-to-face contracts, we have amended the contracts—part of that was during the pandemic, but even following that—after a specific request from providers, who said that it was far more efficient that they used their professional judgment to determine whether they should see a client face to face or remotely. We have a provision where remote provision should not exceed 50% of that, and again, when a contract manager goes out, that will be part of their performance conversation with a provider. But you are right that, in terms



HOUSE OF COMMONS

of a normal face-to-face contract, we do not get them to report a separate box to say, say, "Ten were face to face and five remote this week." We feel that that would be burdensome on the provider base.

- Q50 **Sarah Owen:** Last, Ms Harbottle, particularly in the case of community care, you talked about how that came out of scope and actually there was less need. It is also one of the areas where one of the lowest percentages of the population is within 5 km of the nearest legal aid office. Is it that fewer people require it, or that fewer people are actually accessing it?

Jane Harbottle: Community care is a lower volume category, so we do not get as many new matter starts as we might do in housing, debt or family legal aid. At the time, the procurement areas were devised around feedback from the providers, in that they were offering more of a national service as opposed to necessarily a local service. What is in scope is a relatively niche area of law—

Chair: You are looking at quality in that case.

Jane Harbottle: We are looking at the quality of advice rather than the quantity. That is the case in all areas.

Chair: Thank you. From Sarah Owen to Sarah Olney—a lot of Sarahs.

- Q51 **Sarah Olney:** Ms Romeo, on the point about immigration advice, apparently the LAA highlighted that it received 130 reports between June 2022 and January 2023 from organisations supporting asylum claimants that said that they were unable to obtain legal aid advice for one or some of their clients. Obviously, there is a major ongoing issue with dealing with the backlog of asylum cases. What analysis has the MOJ done of the extent to which an inability to access legal aid is contributing towards difficulties in clearing the asylum backlog?

Antonia Romeo: I will let Jerome answer on that issue. Of course, this is a backlog—they have not come out of the system awaiting this support yet, so the backlog that we were referring to earlier was a backlog upstream of the system for which we are responsible, for providing legal aid.

- Q52 **Sarah Olney:** Okay, so you are saying that there is nobody who is, kind of, in the backlog?

Antonia Romeo: I am not saying that there is nobody; the problem is that there are multiple backlogs, as it were, in the system.

Sarah Olney: Yes, I'm sure!

Jerome Glass: I do not know whether Jane knows the answer to that specific question in terms of the numbers of people, but the short answer is that I don't think that we know the extent to which people not being able to access legal aid would contribute to the backlog, because that is not quite how the backlog works. The backlog kind of exists and the cases are worked through. If there are a small number of cases where people do



not have access to legal aid, I do not think that that would necessarily add to the backlog.

Clearly, it is a problem though, hence all of the remote work that we have been doing to try to ensure that there is an increase in what is called the detached duty advice scheme²—which is basically people in immigration removal centres, for example, who are able to provide advice—and all of the stuff we are doing about making sure that there is payment for travel and for additional accreditation. We are trying to make sure that there is increased provision, but the backlog is sort of there, and the Home Office works through its backlog, sort of, regardless.

Jason Latham: It is a processing backlog.

Q53 **Sarah Olney:** Are you saying that people will not be seeking legal aid until they are no longer part of the backlog? Is that the gist?

Antonia Romeo: Again, there is the processing of the original case; after that point, if their claim is denied, they may then seek legal aid to support their appeal, for example, but, normally, the upstream backlog would be before they sought legal aid. Does that make sense?

Q54 **Sarah Olney:** I think so. Do you have a sense of the extent to which people are unable to get legal aid to help with their asylum claims—or perhaps their appeals? To what extent is that adding to the issues that the Home Office is experiencing around dealing with asylum cases?

Jerome Glass: It is not something that they have particularly flagged to us as something that is making the position worse, not least because the size of the backlog is relatively large—sorry, because there are quite a lot of cases coming through. In terms of the scale, I do not think that it is something that would be making a material difference.

Antonia Romeo: To pick up on a point that Jerome made earlier, that does not mean that we are not worrying very much about the fact that, in some areas, there is a shortage of immigration and asylum legal aid providers. That is why we have done things such as agreeing to raise the fee level, providing the additional money for accreditation, and so on. That was deliberately to fix our bit of the market, which should both help with the IMA and will, naturally, help with other immigration work that will need to be done.

Chair: We keep referring to the IMA; that is the Illegal Migration Act, just to be clear.

Q55 **Olivia Blake:** I want to follow up on that statistic. I should declare an interest: I am the co-chair of the APPG on migration, and I refer Members to my entry in the Register of Members' Financial Interests because I receive support for my work in this area from RAMP, the Refugee, Asylum and Migration Policy group. My question really is about

² The MoJ subsequently clarified that the scheme is named Detention Duty Advice Scheme. See [letter to the PAC dated 3 April 2024](#).



HOUSE OF COMMONS

the access issue and whether you assess the need in an area based on whether it has “city of sanctuary” status. Sheffield is a city of sanctuary, so it has a lot of people providing support to refugees and asylum-seeking people. I just wondered if that was something that was brought in. In Sheffield we have a high number of such people, but at the moment we have, I think, only one provider that is accessible, which seems a bit wrong.

Jane Harbottle: Yes. We are in constant dialogue with the Home Office around dispersal plans and where services may be located. As I said before, we are reliant on people in those areas wanting to do the service. Saying that, where we see an issue, such as the south-west, we intervene. You talked about a charity perhaps notifying us that a service was not available or somebody could not get help. There was an instance a couple of weeks ago. We immediately made a phone call. We got that person a face-to-face appointment in their locality the very next day. Where we see an issue, we intervene and try to help.

In the Report, the NAO raised a specific issue about immigration exceptional case funding and the challenge of some clients being given a notice saying, “You are eligible for legal aid,” and then them having to go around and sort of shop to try to find a provider. We completely take that on board. Although all my staff have been soft-level helping those clients to find a provider or putting them through to the civil legal advice line, we are going to take a more proactive stance. Our customer services team is going to try to match people up where that is the case and where that is reported to us, usually through charities helping people in these positions.

Q56 **Olivia Blake:** In a very short answer, do you agree that that is the right route for those individuals, using that exceptional route?

Antonia Romeo: That’s a policy question.

Jane Harbottle: It is a policy question. From an operational point of view, we administer the regulations.

Q57 **Chair:** What is the latest number of people applying for exceptional case funding?

Antonia Romeo: Jane will have the exact number, but last year, of those who applied, two thirds were immigration cases. We are looking at that exact question, and we are about to begin some stakeholder engagement on it, but obviously the decision of whether you put something within scope for legal aid versus having it in ECF is a policy question.

Q58 **Chair:** Ms Harbottle, could you give us an indication about how long it takes your staff to process an exceptional case funding request? You may not be able to give full details now. If you cannot, can you write to us?

Jane Harbottle: At the moment—as of last month—it is 90% in 25 days. It does vary from month to month.

Q59 **Chair:** That is helpful to know, but this is an extra burden on your staff, so there is a knock-on cost of having a process where people have to



apply for exceptional case funding that falls on to your organisation. If you have any way that you can extrapolate the costs of that time without going to create new figures for us, perhaps you could contact the Committee in writing. I suspect that you may not have those figures to hand.

Jane Harbottle: It is challenging, but I will try.

Chair: Even a narrative indication would be helpful to get what the knock-on effect of that is on your organisation.

Jane Harbottle: Of course.

Q60 **Sarah Olney:** Ms Romeo, financial eligibility thresholds have remained pretty static since 2009, despite considerable wage inflation. The proportion of the population that is now eligible for legal aid has dropped considerably. Does it make you concerned that that may well mean that there are people who are not eligible for legal aid who really should be under what the LASPO was trying to achieve in terms of making sure people have got the representation they need?

Antonia Romeo: In May last year, we announced the means test review, which has set out our intention to implement higher thresholds. This is going to be an injection of an additional £25 million legal aid funding a year. We think that an additional 2.5 million people will be brought in scope for civil legal aid and 3.5 million additional people to fund their defence at the magistrates court once we have implemented all those changes. Phase 1 of the means test review has already been implemented, which is essentially putting in the non-means test elements. That is for things such as under 18s who are seeking legal representation. The remaining phases for civil and criminal are going to come on by 2026.

Sarah Olney: Right, but you announced a review of the eligibility threshold in early 2019 and it seems to have taken an awfully long time to bring this means test in. As I understand it, it is based on 2019 data.

Antonia Romeo: Two points on that: obviously, I agree that it is a long time. It is a really complex policy, because of the means test—it is not one threshold, but multiple thresholds for different things. It has involved a huge amount of stakeholder engagement, workshops and so on to get to the point in May last year when we announced the means test review consultation—sorry, we announced the consultation in 2022, we then consulted and announced the response in 2023, and that is the thing that has set the £25 million. You had a second part of your question—

Sarah Olney: That it is going to be based on 2019 data.

Antonia Romeo: We have said that before we implement, we will be reviewing again.

Sarah Olney: Will it take as long to review?

Antonia Romeo: No, we just want to wait for some of the latest data from the ONS, essentially to take account of the latest inflation data



HOUSE OF COMMONS

before we finally go nap on the thresholds. We think that is really important and it presumably lies behind your question.

- Q61 **Sarah Olney:** Will the thresholds be continually reviewed, or is it going to take this long every time?

Antonia Romeo: I think our intention would be that it wouldn't take this long to review each time, but obviously it would be a matter for Ministers how frequently one reviews the thresholds, partly because—as a statement of the obvious—you do not want to constantly review them, because you do not want people who would be in scope one year to be out of scope the next or vice versa. You do not want to review them too often; you want a period of certainty about them.

Sarah Olney: It happens the other way around, doesn't it? People who are out of scope this year will be in scope next year.

Antonia Romeo: Yes, but vice versa is the more apposite point.

- Q62 **Sarah Olney:** Okay. What factors will you be looking at in the future? Surely there has to be a focus on the sorts of people and sorts of groups that ought to be in scope for legal aid, yet the threshold where it is set currently means that too many fall outside it. Is that the kind of analysis you will be doing when you are looking at thresholds in the future?

Antonia Romeo: With thresholds, there is obviously eligibility and then there is also, as you say, scope. You essentially want to look at both. We are still now looking at the consequences of the work we announced in the post-implementation review of LASPO and there was all that work that could be action-planned that went alongside that. One of those things—part of that action plan—was to announce the means test review. That is now about to set the new thresholds, but obviously one wouldn't want to change the thresholds again without appropriate evidence. We want to keep that evidence gathering and we are doing a raft of other surveys and reports to try to gather the evidence base we were referring to earlier.

Chair: On a continual basis?

Antonia Romeo: We are gathering evidence and data on a continual basis, and I think we are much better now. What we are doing is surveying providers and users—we can say more about any of those. If helpful, we have published a whole raft of reports and research on this. The question is then what you do with that to inform the next review of the means test. The key thing from our point of view is to get this one done. It is very complex digital work to put it into all of Jane's systems to make sure that it is accurate. We have already noted that there are a number of competing Government priorities in this space. We want to get that done and then we will start worrying about the next time that we review the thresholds.

- Q63 **Olivia Blake:** I was just going to ask a little, if it is okay, about quality and whether you think the issues you have with accessibility are overshadowing improving the quality of services.



HOUSE OF COMMONS

Antonia Romeo: Can I just ask you to expand on the question, perhaps? What is the quality concern that you have? In which area, or who is not getting access?

Q64 **Olivia Blake:** Well, access is one issue. The other is the quality of that access and the quality of the advice. Bad advice is worse than no advice, and I always think there is room for improvement.

Chair: Ms Harbottle has teams that go in, doesn't she?

Olivia Blake: I think the point to Ms Romeo is that earlier advice would, you would hope, save money, so I was just wondering if there is a link between the two.

Antonia Romeo: You are right—I think the heart of your question is whether early intervention is better than late intervention, and I think we think that it is. That was one of the points that came out of the post-implementation review and we have been doing quite a lot of work on a number of pilots, which was another thing that came out of the legal support action plan—looking at specific things. Essentially, the point of the legal support action plan was to let us pilot some things and then both use the outcome of those pilots to gather evidence, so that we have a better evidence base, and see what can improve the service.

In particular, we now have not only the early legal aid pilots but the early family legal aid pilots, which are learning the lessons of the early legal aid pilots. The point of doing those pilots is to tell us then what works, what does not, what is actually improving access and what is diverting more people in the best way, which is getting resolution, for example, before they have to go to court. That is the work we are doing to improve quality.

Q65 **Chair:** When we last looked at this properly in 2015—we have obviously looked at some of it since—we then looked to ask questions of the MOJ about the wider impact of not having proper legal advice at the beginning, and there was a bit of pushback from the MOJ then. What are you doing now to look at the impact of not providing enough legal aid on other bits of the public sector?

Antonia Romeo: One thing that was probably said then, and we still think now, is that it is quite hard to precisely measure the impacts of the wider costs, but—

Chair: It is more that—yes, I will let you have the “But”.

Antonia Romeo: Nothing matters before the “But”. But as part of the post-implementation review of LASPO, we did a huge amount of work looking at essentially where people ended up in the system. It reviewed the overall costs and benefits of LASPO, and again to Ms Blake's point, it identified early intervention as a key focus. Since then, we have launched a number of schemes to build our evidence base.

We therefore have a lot of evidence from stakeholders on the impact of LASPO and the changes to scope and eligibility. On the conversation we



HOUSE OF COMMONS

were just having about means test review, that is essentially a function of what we discovered about eligibility there. We have also done quite a lot of work on reports evaluating the grant schemes that we have had in place and where we think the benefits and costs have fallen on that. We have done quite a lot since 2014 or 2015, when I think the Committee last looked at it, and most of that work was kicked off in the post-implementation review. That was a really big, year-long piece of work, but there has been a lot of analysis since.

- Q66 **Chair:** There are all sorts of potential knock-on effects on mental health, as I think we highlighted at the time, and the impact of delays in going through the system because you do not have good legal advice—that can have a major impact. Some of these are qualitative and it is hard to quantify for every single case going through. Are you looking at any qualitative work on this?

Antonia Romeo: Yes. Jerome will want to add to this because he is leading a lot of it. You are exactly right that, even when it is hard to quantify exactly what the cost is, you can normally tell when something has shunted a cost somewhere, even if you do not know what the cost is. When that is the case, we are working very closely with the Department in question, because often the cost is essentially shunted elsewhere in the system, such as to a local authority or DHSC, as you have outlined. To work out how we can essentially move the thing further upstream or do more early intervention, we are doing quite a lot with DLUHC and DHSC.

- Q67 **Chair:** Before I bring Mr Glass in, one of the other areas is early support for immigration cases. People get it at appeal stage. We are all constituency MPs, and I am one of the top six customers to the Home Office as a constituency MP on immigration. Quite often, people have very little hope of a case going through, but they have gone through the system, and it is only at appeal stage, or when they visit their MP, that they get any legal advice and are told, “You are not going to get very far with this.” Indeed, there are other really challenging cases where they could have done with legal advice to help them shape what could have been a good case early on. That seems to be not very cost-effective. Are you talking to the Home Office about that lack of support at an early stage? Actually, it could be much more costly for the system for people to dribble through it, sometimes with no hope, or sometimes with a really straightforward case.

Antonia Romeo: We are, and Jerome wants to come in. The Lord Chancellor and I actually went up to see one of the Home Office case-working zones to talk to them about exactly how the flow-through worked and how we work together with them. One thing I would say is that, in a world of limited resources, you obviously want to get upstream as much as possible. Sometimes, when the absolute drop-dead thing you must do is deliver in the downstream, you have to start there.

- Q68 **Chair:** When you say the “drop-dead” moment, is that the moment of appeal, because that is a critical point of whether someone stays in the country?



Antonia Romeo: Yes. When there is a statutory requirement to provide legal aid, that is the thing we are spending all of our time worrying about providing—well, not all of time but most of our time. Thus, the remaining time is spent worrying about how we can intervene earlier, but sometimes, in a world of constrained resources or not enough providers, you cannot always do that.

Chair: Intervening earlier could be a lot cheaper for the system as a whole, if not necessarily for the MOJ.

Antonia Romeo: I agree with that.

Chair: Is there anything you want to add, Mr Glass?

Jerome Glass: I think the permanent secretary has covered it. One of the things that we learned from the post-implementation review was that we needed to put much more effort into legal advice—hence the legal support action plan. I would point out two or three areas. The permanent secretary mentioned housing. We launched the Housing Loss Prevention Advice Service, working with DLUHC, because of concerns we both had about the lack of legal advice in that space. We created the housing disrepair online signposting tool, again with DLUHC, to try to get upstream a bit. Family law is another area. That is where we have done our pilots and the mediation voucher scheme.

Q69 **Chair:** Do you sometimes look at where people can get advice? You mentioned housing, and often a councillor or an MP will pick up housing matters before they get to the legal point. Once it is lawyer to lawyer, it is impossible for elected MPs to take it up. The lawyers won't speak to you, it is much more expensive, and it doesn't always lead to better results. Sometimes a local councillor can get as good a result much quicker and cheaper. Do you look at those options?

Jerome Glass: Yes, absolutely. One of our concerns—this is true in housing and in family law—is that cases are either getting to court or are not being resolved adequately because people are not aware of how to navigate the system. Whether it is immigration, housing or family law, it is a very complex and intimidating system, particularly for vulnerable people. That is precisely why we are putting effort into upstream legal advice. As you say, when it gets to court and so on, it has momentum of its own.

Chair: And with court delays, it takes quite a long time to come through.

Q70 **Sir Robert Neill:** One thing that is probably common ground—the merits of the policy are not your concern—is that LASPO has led to an increase in litigants in person in virtually all jurisdictions. I am interested in what the Ministry and its agencies are doing to capture as much information as you can about the extent of that, in terms of both the numbers and the potential cost to the rest of the system. What do you do to track, with hard evidence, how much longer litigants in person take in the various jurisdictions—crime, civil and family? You have probably seen the evidence given to us by senior judges about that. What are the Ministry and its agencies doing to get a firm statistical handle on that?



HOUSE OF COMMONS

Antonia Romeo: We have quite a lot of good data on that. The spoiler is that it doesn't always take longer, but I will hand over to Jason, having stolen his top line.

Jason Latham: Sir Bob, it looks different in different jurisdictions. In tribunals, for instance, there is part of the justice system that has pretty much been established to deal with litigants in person, in terms of its systems and processes.

In private family law, we know that since the legal aid changes, the number of litigants in person has significantly increased over the last 10 years. If you look at the impact on waiting times, where both parties do not have a representative, it tends to take slightly less time than it does where both parties do have a representative. That was a feature pre-LASPO, and it has continued to be a feature. There is about a two-and-a-half-week difference in how long cases take to go through the system. When you look at the data over quite a lengthy period, litigants in person in the private family law space haven't taken longer to get a result out of the system. In fact, it takes slightly longer when they are represented.

If you then start to look at durations of hearings and cases, it is true to say that hearing durations have increased for litigants in person, but that is against a broad trend of hearing times increasing for all parties in the family courts. Even where the parties have legal representation, the hearings are taking longer. There is not really much difference between the duration of a hearing for a litigant in person in which both parties are unrepresented and the duration of a case in which both parties are represented.

One of the big trends that you can see over the last 10 years is that the shorter hearings of, for instance, 30 minutes have significantly decreased—but this is across the board—and longer hearings of at least 60 minutes have significantly increased over that time. That is why you see a broad increase in hearing durations in private family law proceedings, but not necessarily in terms of the waiting times for different people to move through the system.

Sir Robert Neill: That is private family law. Public family law is rather different, isn't it?

Jason Latham: In terms of levels of representation in public family law, it is—

Sir Robert Neill: Generally, you will have people who have thought a lot about it.

Jason Latham: Yes, you will have lawyers.

Sir Robert Neill: But equally in a lot of county court proceedings.

Jason Latham: Yes. It depends on which part of the county court you are in.

Sir Robert Neill: Let's take money claims.

Jason Latham: On money claims, I think levels of representation have historically been somewhere around 30%. It generally depends on the value of the claim.

Sir Robert Neill: Yes, the value of the claim will make a difference. The bigger the claim, the more likely someone is to be represented.

Jason Latham: The value of the claim makes a huge difference. If we look at claims beneath the value of £10,000, that is very much a part of the civil system that has been specifically designed for litigants.

Sir Robert Neill: It is probably inevitable that you are not going to get represented for that anyway, in reality, because it is probably not worth it.

Jason Latham: No, in personal experience. Those have been specifically designed to enable a litigant in person to make a good case. It is one of the reasons—I know Jerome may want to come in here—that in May we are introducing automatic referral to mediation for small claims.

Sir Robert Neill: Before Mr Glass comes in, what about housing, for example?

Jason Latham: In terms of possession cases?

Sir Robert Neill: Yes, and related debt cases.

Jason Latham: I do not have the information on possession directly to hand. What I can say is that, if you look at a county court process, lots of cases are listed, and generally it is the engagement levels of the individual litigants that are the issue. Not very many litigants will come to the court in relation to their case.

Q71 **Sir Robert Neill:** Do you capture any data, or try to, as to any differential between representation and non-representation of cases that settle, which then save a court hearing?

Jason Latham: In terms of the county court?

Sir Robert Neill: Yes. It will be recorded. Somebody will go into court and say, "I withdraw the claim." They will say that it is settled, one way or another, either by letting the court know remotely so it can vacate the hearing, or by the parties turning up and saying, "We've come to an agreement, and here's the agreed judgment we want."

Jason Latham: It is not a piece of information that I have directly to hand. We do collect information on who is represented and who has settled.

Chair: Could you write to us with the best information you can provide?

Q72 **Sir Robert Neill:** Do you run your analysis past the judiciary, for example, in the individual courts, at a senior level with the Judicial Office



HOUSE OF COMMONS

or in the Ministry on your behalf?

Jason Latham: The analysis of?

Sir Robert Neill: The impact that litigants in person have on court hearings.

Jason Latham: I was not suggesting for a moment that there are not significant challenges for litigants in person. Over the last decade, the judges have put significant effort into how they operate with litigants in person. We can see that through the "Equal Treatment Bench Book" and the huge amount of guidance that is out there. Yes, they have an impact, and I do not dispute the qualitative impact for district judges or deputy district judges day in, day out. But when you look at the quantitative data, unfortunately, the case that unrepresented people take longer to move through the system does not come out.

Q73 **Sir Robert Neill:** One bit of quantitative data that we do have is the shortfall in recent district judge and deputy district judge recruitment competitions, which seems to suggest that it is harder to recruit people to sit on the district bench. The conclusion that has been put to the Justice Committee is that one reason for that is the extra burden that the increase in litigants in person places on the judges who have to try the case and deal with people without any legal expertise. I have had more than one judge saying, "I end up having to do the photocopying. I end up having to get the papers in order, to ensure that it is a fair trial." That is a burden on the system, which, so far, there does not seem to be a measure for capturing.

Jason Latham: I would agree, Sir Bob. Operationally, it is a rare day where there is an expectation that judges are left to photocopy their own papers. That is certainly the responsibility of the court staff.

Sir Robert Neill: It certainly ought to be, but there is an indication that sometimes the pressures get that bad.

Antonia Romeo: It might be worth adding that we have injected quite a lot of financial investment into supporting litigants in person. Since 2019, we have injected £23 million via a number of different grants, particularly to support litigants in person, accepting that they do need more support.

Q74 **Sir Robert Neill:** Two quick points, if I may. Do you do any work to find out whether other Government Departments have any evidence on the impact of litigants in person? That could be additional costs incurred by, let us say, health authorities or NHS litigation, or local authorities, as parties to proceedings where it may take longer to come to a settlement than might otherwise have been the case. Is there any means whereby that is captured?

Antonia Romeo: I do not think other Departments routinely collect that information.

Chair: Do you have any anecdotal information?



HOUSE OF COMMONS

Jerome Glass: No. That is part of the reason why the Treasury has funded us the £23 million, because it acknowledges that it is a problem worth trying to fix.

- Q75 **Sir Robert Neill:** Finally, we had that attempt, as a pilot, in terms of early legal advice, which was about £5 million in 2019. That really did not take off at all, did it? It got to, I think, three providers against a target of 1,600. What are the lessons to be learned from that?

Antonia Romeo: Others will want to add, but the first thing to say is that it is obviously not great to be doing a pilot and then, we acknowledge, having really quite limited take-up. On the other hand, you cannot always do the pilot that then suddenly is the huge success. We were focusing on two areas—Manchester and Middlesbrough—and we did a big push to encourage take-up. We had a certain number of people look like they might be interested but, in the end, we only had three who were. One of the lessons is not about the amount of effort that was put into trying to make a success of the pilot; it was just that the way we targeted it and what we were offering ended up not actually being appealing.

Jerome Glass: Two things, quickly. First, as the permanent secretary said, we learned a lot from it. We failed fast, in the sense that we stopped when we saw it was not getting the take-up. We then used that learning to design the next thing we are doing, which is the early family legal advice.

We learned two things from that. One is better engagement with the providers; I think we were a little bit top-down, so we are going to do that better. Also, rather than writing letters to people, we will work with the existing providers, who know their clients.

Secondly, it is just about better comms and advertising. Across the piece generally, one of the issues we have been finding while doing the review of civil legal aid is that people do not know they are eligible. They think legal aid is for crime and are not aware that legal aid is available in lots of civil cases as well. We really have to work on that.

Antonia Romeo: In the spirit of our ambition always to collect data, we are doing a full evaluation of it. We will be publishing that later this year.

Chair: I have to say that those are two phrases that make us happy: “failed fast” and “evaluation”. You get a little gold star for that, at least.

Sir Robert Neill: Try to do it before the next election. I shall look forward to reading it.

Chair: Rather than doggedly going on with something that is not working, it is better to acknowledge it.

- Q76 **Sarah Olney:** Mr Latham, I have a bit of a concern. You talk about private family law and the impact of litigants in person. If you have one party that is properly represented and another party that is a litigant in person, is there a risk that, for example, child protection concerns or domestic abuse allegations will not be properly tested, given that there is



HOUSE OF COMMONS

that imbalance in legal representation? Are you aware of that? If so, what might be done to mitigate it?

Jason Latham: To start off with, what does that look like in terms of waiting times? Broadly, I talked before about the waiting times where either both parties are represented or not—

Sarah Olney: I am thinking more about the impact. In the court hearing, you have one party who is represented and one party who is not. I am concerned, for example, about child custody disputes where concerns are brought forward about child protection. Can they be properly tested if one party is unrepresented and the other is not?

Jason Latham: Yes. The judicial model in private family law proceedings is always to start from the interests of the welfare of the child. The court has a wider duty when there is a litigant in person—one of safeguarding and protection. So I would say yes; whether one party or the other is represented, it does not diminish the way the court will investigate the issues at dispute.

Generally, we tend to see that, where the respondent party solely is represented, cases take considerably longer—in fact, they are the longest cases to go through. Where it is simply the applicant represented, the cases tend to go through in the shortest amount of time. In terms of whether it makes the litigant in person unequal in arms, I do not think so, no, and a huge amount of work has been put in place by judges to ensure that does not happen.

Jerome Glass: Could I add an important point? In cases where there is an allegation or risk of domestic abuse in a private family law proceeding, there should be access to legal aid. That is something that is specifically set out in LASPO. I am not saying that it does not happen, but I hope that that concern would be addressed through that exemption.

Q77 **Sarah Olney:** That is good to know—thank you. There are different types of litigant in person. Some are very actively involved in their case and will turn up and argue in person, and others are simply not engaged. Do you distinguish between those two different types? How does the data reflect that difference?

Jason Latham: This is really where the limitations of the data find their cul-de-sac. We are talking about active and inactive parties, and it is much harder to define that and collect data on it. One of the anecdotal instances that is often relayed about private family court is returner applications, where someone is returning with an application that has been heard previously by the court. One party is tremendously engaged, because it is almost relitigating what it has brought before, and the other party is less engaged, because it has been through it all before and it has been through the mill. As we have acknowledged, particularly in family court, these are particularly stressful and anxious proceedings for all involved. I would not say, “No, there is no level of that.” But does our data get to that? No, not at the moment. It is quite limited in terms of what it can capture.



Q78 Sarah Olney: Presumably, then, there is a risk, given that you have these two different types of litigant in person. The hearings of type 1 will take longer than type 2, but you are rolling them all together. Do you think you are getting an accurate picture of an estimated hearing time? You have these two different types, one which will take longer than the other, and you are not distinguishing between them. You are coming up with one estimate of how long a hearing is going to take, when you actually have a wide span of different types of hearing. Do you think your estimated length of hearing will be impacted by the fact that you are not distinguishing between these two types?

Jason Latham: That is really what was behind the point I did not articulate particularly clearly—about the trend we see with the respondent party when they are legally represented but the other side is not. Those proceedings tend to take considerably longer in terms of waiting times. That is generally because that is where we see a very active unrepresented party. When we look at the applicant only, that is what takes the shortest amount of time, because you tend to find there a more inactive respondent in relation to the application. The data we collect currently is not able to distinguish what are fine categories. As we start to roll out the digital service that we are currently piloting in this area, that is exactly the kind of data that we want to be able to collect, because it will tell us about returner applications and the different characteristics of people bringing the applications. That will give us far more insights for operational purposes, but also in terms of the Ministry's legal aid capacity and for Jerome in terms of the right policy options to craft at the right time.

Q79 Sarah Owen: I know that a lot of work was done on the failure to increase legally aided mediation in family cases, including a consultation that reported back in January this year. What reason was given for that failure?

Antonia Romeo: If you look at mediation overall, the numbers have gone up significantly because of the family mediation voucher scheme. You are right that, following LASPO, numbers dropped significantly. In 2012-13, the number of publicly funded mediation cases was about 13,500; the following year it was 8,500. But because of the introduction of the voucher scheme, the number last year was 17,250. So we have sort of plugged the market: there is still publicly funded mediation, but we are doing it by vouchers rather than by access to legal aid.

Q80 Sarah Owen: Is there a reason why people are choosing to use the vouchers? A small proportion of people were eligible for legal aid but have chosen to use the vouchers instead.

Jerome Glass: Essentially, what was happening prior to LASPO was that private family law was in scope: people were going to their solicitor and the solicitor was referring them to mediation. When people were no longer going to their solicitor, we thought at the time that they would spontaneously go to mediation. That turned out not to be a correct assumption so, as the permanent secretary said, we have tried to plug the



HOUSE OF COMMONS

market. As was set out in the Report and your previous report, that mistaken assumption was made at the time.

- Q81 **Sarah Owen:** Moving on to the sustainability of the legal aid market, why has it taken so long to review the criminal and civil legal aid fees?

Antonia Romeo: We have injected quite a lot of money into the process. We first injected the £23 million, in the advocate's fee scheme reform in 2018. We have injected £51 million via CLAR—the criminal legal aid review, which became the criminal legal aid independent review with the Bellamy report. As a result of the Bellamy report, we will be injecting up to £141 million in steady state; there has been a process that has culminated in CLAIR.

On the civil side, ROCLA—we like an acronym—was launched in January last year. We will be finishing the evidence-building phase in about May this year. We are working towards a Green Paper in July.

Throughout all this, we are determined—as covered in the earlier part of this conversation—to get the evidence before we come up with the changes. The civil legal aid side is taking quite a long time, but that does not mean that we have not done quite a lot in the meantime in trying to respond to particular things—HLPAS, the housing loss prevention advice service, for example. That had an injection of £10 million and is an example of something that we have done in the interim while we are waiting for the full outcome of the civil legal aid review.

- Q82 **Sarah Owen:** I appreciate that you probably will not want to share the answer to this question just yet, but I will kick myself if I don't ask. Do you expect to raise civil legal aid fees following the review, or will there be more interim work and support?

Antonia Romeo: I don't think I can answer that question.

- Q83 **Chair:** Just to get a timetable, when is the Green Paper?

Antonia Romeo: July.

Sarah Owen: You have said that this is taking quite a long time in comparison. What is the hold-up, and what is causing the delays and the length of time for this review?

Antonia Romeo: For the civil legal aid review?

Sarah Owen: Yes.

Antonia Romeo: Having kicked off, it just took a lot of time to do all the evidence gathering, workshops and so on to get the data. So we are still in the evidence-building phase—it is just taking a lot of time to gather all the evidence. When we get to the Green Paper, I think overall it will have been about a year and a half, which is quite a long time, although less, actually, than CLAIR took from flash to bang.

Jerome Glass: I know it feels like a long time if you are a provider—we completely understand that. What we do not apologise for, though, is



getting the evidence and then making the policy off the back of the evidence. We have done extensive analysis. There are international comparators coming, there is economic analysis, there are surveys of the market and we have been working with the Law Society, which has done its own surveys of profitability, so that we can design the policy. One of the critiques of LASPO was that it was done in a little bit of a rush. We are trying to learn the lessons of that and make sure that we design a response to the civil legal aid review that is really evidence based, and that the providers are really bought into.

- Q84 Sarah Owen:** I appreciate that, but I want to have one more go at this. Is it about the scale and the volume of the evidence that you are trying to collect, or is it the resources—staff and funding—that is causing a bit of a delay? Or is it a little from column A and a little from column B?

Antonia Romeo: I think probably quite a lot from column A and a little from column B. Jerome mentioned that we have already collected a lot of provider data and put it out there. We also have the legal problems and resolutions survey, which is surveying 10,000 potential users, so if you are trying to survey 10,000 people it is obviously going to take quite a long time if you want it to be rich data. You have to work out who the 10,000 are, and they are selected in a particular way to make sure they are representative. So I think a lot of it has been that, and obviously we have a number of other priorities that mean we do not have an infinite amount of resource to put on it.

- Q85 Sir Robert Neill:** Just to quickly go back to Bellamy, one of the recommendations was that going forward there should be a mechanism for potentially uprating on an annualised basis rather than having the cliff edges that we have had in the past. What is the progress on establishing that?

Antonia Romeo: You will know that one of the recommendations was the Criminal Legal Aid Advisory Board, which is essentially looking at the future structure and levels of fees. So that will all be captured, and that is already under way. It is meeting, it is being chaired by a judge, and it will be advising and giving recommendations to Ministers on things like levels and structures of fees.

Sir Robert Neill: And uprating mechanisms remain within scope of their work.

Antonia Romeo: Yes. Obviously they are an advisory board, ultimately, but yes, they will be thinking about that.

Sir Robert Neill: But they are not precluded from suggesting, "Here's a means by which you can uprate it."

Antonia Romeo: No—we hope they will.

- Q86 Sir Robert Neill:** You would hope that they would. Okay. There has been some concern in the sector that there might be some rowing back on that, but not as far as you are concerned.



Antonia Romeo: No, I don't think so. That board is set up in order to come up with thoughts about appropriate levels of fees, but also structures, because as we have discussed before in another room in this building, where you pay the fees and how the incentives work is a crucial part it.

Q87 **Sir Robert Neill:** That is very helpful. The other thing I was going to ask was on the civil side—maybe you could pick up on this, Mr Glass. You will have seen that on the Justice Committee we have had lots of evidence about the age of duty solicitors in particular, and we talked earlier about geographic gaps in the scheme. I think the suggestion is that the average duty solicitor is about 47—it is sometimes even worse in some parts of the country. What is the Ministry doing proactively to try to improve the supply? It is really about making it more attractive to young people. Frankly, at the moment it is not worth their while to turn out at 2 o'clock in the morning on the levels that they are getting. What can be done, on the basis of what you have got, to improve that? You might say more money, but are there other things as well?

Jerome Glass: The first thing is to add to what the permanent secretary said about the Criminal Legal Aid Advisory Board. One of the things that it is specifically looking at is the structure of the litigators' graduated fee scheme. That is one of the areas where we said, "We need you to help us to design something that is better."

Sorry—I think you said "civil"; do you mean "criminal"?

Sir Robert Neill: The duty solicitors.

Jerome Glass: Jane might want to come in specifically on the age profile. I know you said "not just fees", but we are very specifically consulting right now to increase fees for the police station scheme. I was with a provider last week in south London who was saying, "We find it really hard because we're not able to pay young people who come into the firm an appropriate amount in order for them to be able to live here," and so on. We're live to that kind of risk, hence why we're trying to put more money into the front end—the police station end—of the scheme.

Q88 **Sir Robert Neill:** Finally, I will come to you, Jane, on a broader theme. There has been quite a bit of evidence on this. The contract period is roughly three years, normally—that's the average. Are you looking at whether or not that may be a problem, sometimes, if a firm wants to expand and at the moment they are not in a position to do so? Is there scope for some flexibility to enable people who do want to expand and to do some crime law or some immigration law somewhere where they are not currently to start part way through, without having to wait for an extra three years?

Jane Harbottle: You are absolutely right. Historically, I think this is probably the biggest barrier in terms of entering the market. We have gone out with a tender for three to five years and—surprise, surprise—we've got an uptick in the number of providers. We have allowed people to leave, but we haven't allowed anybody to join, so by the end of the



HOUSE OF COMMONS

period—which is inevitably sometimes extended—we have fewer providers than we do at the start. That is something we are absolutely committed to doing and we will consult with representative bodies shortly.

For the first time ever, we opened the civil tender mid-term last year, as I said, and we got a good response to that. Contract for crime from September 2025 is in development now, and we will go out to representative bodies with a number of measures, not just about the term but also about a number of other things that I suppose might ease the administrative burden of doing business with us. That is absolutely a commitment and a goal for the agency and my board as well.

Sir Robert Neill: That is welcome.

- Q89 **Sarah Olney:** The NAO Report found that there were weaknesses in the MOJ's data and processes that mean there are risks to ensuring the sustainability of the provision of civil and criminal legal aid. There has not been enough horizon-scanning to anticipate issues that might arise, and you are not collecting the data you need to ensure that the kind of firms and organisations that currently provide legal aid services will want to or be able to continue to do so in the future. Ms Romeo, can you tell us what sort of actions you might be taking to address some of those issues?

Antonia Romeo: In a way, everything that we have been describing in this session leads towards that. The work being done on an ongoing basis at a regional level by Jane and her team is about: "Who is planning to exit the market? Where are we going to have problems?" That is at the core of market sustainability. Then there is the national picture, where we are gathering information. We gathered a lot of information via the criminal legal aid independent review and now the board, CLAAB, will do ongoing work on that and will have anecdotal and survey data to inform them. All the work we are doing on civil legal aid that is going into the review of civil legal aid will essentially tell us the position and inform us about the view of market sustainability on the civil side, and that will inform what actions we need to take to meet that sustainability and ensure that there is a sustainable market.

- Q90 **Sarah Olney:** Are there current challenges coming up through those processes that you think you need to urgently tackle in order to maintain market sustainability?

Antonia Romeo: Some of them we have already tackled. Housing is a good example: the housing loss prevention advice service and the injection of the £10 million was a good example of where we knew there was a particular problem in housing and we did not want to wait for the Green Paper, so we launched that in 2023.

Immigration is another area. We know that the Illegal Migration Act is going to put additional pressure on, so in advance of that we did the policy work to say, "Right, we have to uplift the fees. We are going to make additional payments on the duty advice scheme." There are other areas like that where, when we know something is going to be a problem



HOUSE OF COMMONS

because it is coming out of the evidence that we are gathering, we are not waiting: we are putting in targeted interventions to address those particular issues. We expect that when the review of civil legal aid is concluded there will be additional things that we will want to do, but that will come out in the Green Paper.

Q91 **Sarah Olney:** Are you finding a sufficient pipeline of properly qualified practitioners? Or is that an issue on your radar?

Antonia Romeo: It is definitely an issue. We want to make it easier. It is all about reducing barriers to entry to the market so we want to make it easier, for example, for CILEX practitioners to qualify to be solicitors. There is a raft of work we are doing. As part of the review of civil legal aid, we are looking to do that. We review solicitor, solicitor advocate and barrister data through the aforementioned Criminal Legal Aid Advisory Board, which will help to ensure that we monitor practitioner levels across those areas. Getting the barriers down so that we can bring more people into the profession is essential.

I should say that we work incredibly closely with the profession, because we see our role as being to facilitate those people who work incredibly hard to provide this crucial service for the citizen, so we are very keen to ensure that we make it as easy as possible for those who do want to provide services to enter the market.

Chair: I thank our witnesses very much for their time. It feels a bit like groundhog day—it is not that long ago that we were looking at the implementation of this. There is lots for us to get our hooks into and follow up on as this goes through, not least the Green Paper and various bits of legislation. The transcript of this session will be available on the website uncorrected in the next couple of days. We will produce a report after the Easter recess. Thank you for your time, Jane Harbottle, Antonia Romeo, Jerome Glass and Jason Latham.