

Justice Committee

Oral evidence: [Access to Justice](#), HC 1247

Tuesday 6 January 2026

Ordered by the House of Commons to be published on 6 January 2026.

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Members present: Andy Slaughter (Chair); Pam Cox; Linsey Farnsworth; Sir Ashley Fox; Warinder Juss; Dr Neil Shastri-Hurst; Vikki Slade; Tony Vaughan.

Questions 1 - 51

Witnesses

I: Richard Miller, Head of Justice, The Law Society; Rohini Jana, Director of Policy, Legal Aid Practitioners Group; and Kirsty Brimelow KC, Chair of The Bar Council.

Written evidence from witnesses:

[Law Society of England and Wales \[ATJ0113\]](#)

[Legal Aid Practitioners Group \[ATJ0074\]](#)

[The Bar Council \[ATJ0168\]](#)

Examination of witnesses

Witnesses: Richard Miller, Rohini Jana and Kirsty Brimelow.

Chair: Welcome to the first session of the Justice Committee of 2026. This is the first public session of the new inquiry on access to justice. This session is about legal aid and sector sustainability, which I am sure will be explained to us. I ask the witnesses to introduce themselves, but before that, as usual, members of the Committee will give their declarations of interest, starting with Warinder Juss.

Warinder Juss: Good afternoon. I am Warinder Juss, the Member of Parliament for Wolverhampton West. Relevant to today's session is the fact that before becoming an MP I worked as a personal injury and clinical negligence solicitor for Thompsons, a trade union law practice. I am also an executive council member of the GMB trade union and a member of various APPGs.

Pam Cox: Good afternoon. I am Pam Cox, the Member of Parliament for Colchester. My interests are as declared on the register. I will just add that I am the chair of the APPG on penal affairs.

Tony Vaughan: Hello. I am Tony Vaughan. I am a barrister and before I became a Member of Parliament I practised a lot in civil legal aid. I am an associate tenant at Doughty Street Chambers. I draw attention to my entry in the Register of Members' Financial Interests. It is also relevant that I used to be a legal aid funding adjudicator.

Chair: I am Andy Slaughter. I am the Chair of the Committee and the MP for Hammersmith and Chiswick. I am a non-practising barrister, a member of the GMB and Unite trade unions, and a patron of two justice-related charities: the Upper Room for ex-offenders, and Hammersmith & Fulham Law Centre.

Linsey Farnsworth: Hello. I am Linsey Farnsworth, the Member of Parliament for Amber Valley. My interests are as per the declaration in the register, but of note is the fact that I am a former Crown prosecutor, a member of the APPG on access to justice, and co-chair of the APPG on legal and constitutional affairs.

Vikki Slade: Hello. I am Vikki Slade, the Member of Parliament for Mid Dorset and North Poole. My interests are as per the register, but I have no relevant interests.

Dr Neil Shastri-Hurst: Good afternoon. My name is Neil Shastri-Hurst. I am the Member of Parliament for Solihull West and Shirley. My interests are as per the register. In addition, I would note that I am an associate tenant at No5 Barristers' Chambers and a former officer of the APPG on access to justice.

Sir Ashley Fox: Good afternoon. I am Ashley Fox, Member of Parliament



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for Bridgwater. I am a former solicitor and my interests are as on the register.

Q1 Chair: Thank you very much, everyone. As I said, I will ask each witness in turn to introduce themselves and give a brief overview of the organisation that they represent, and its relevance to today's proceedings, starting with Rohini Jana.

Rohini Jana: Good afternoon, everyone. My name is Rohini Jana. I am a director of policy for Legal Aid Practitioners Group. We are a membership organisation that represents the interests of legal aid practitioners across England and Wales, and across various practice areas. We also provide the secretariat for the APPG on access to justice.

Kirsty Brimelow: Good afternoon. My name is Kirsty Brimelow. I am the chair of the Bar Council. The Bar Council represents around 18,000 barristers now, across the jurisdiction of England and Wales. I am new in post, having been vice-chair last year. As a practitioner, I practise from Doughty Street Chambers in international human rights, public law and criminal law.

Richard Miller: I am Richard Miller. I am head of the justice team in the policy directorate at the Law Society of England and Wales. We represent around 200,000 solicitors practising across all areas of law in the country. We do not have exact numbers for those practising within legal aid and access to justice areas, but I think a reasonable estimate would be that there are in the region of 20,000 to 30,000 of them. My personal background is that I have been working in policy issues related to legal aid and access to justice since 2000.

Q2 Chair: Thank you very much. We are going to talk quite a lot about legal aid this afternoon, but the brief for the inquiry is considerably wider than that: it is access to justice more generally. Perhaps each of you could start by defining what you mean by access to justice, and how the work of your organisations fits within that—starting in reverse order with Mr Miller.

Richard Miller: Access to justice requires, first of all, that people who have a dispute have a mechanism for resolving it. We would say that that must necessarily involve a court or tribunal. That is not to say that every dispute has to go to those; but alternative means of resolving disputes will be effective only if there is ultimately a court or tribunal that can resolve the matter in default of agreement between the parties by some other mechanism. It also requires that people have access to the support they need to be able to navigate the systems for resolving the dispute. In some cases that support may be limited to a bit of information that they can access to then resolve things for themselves. Others will need more intensive support, including direct advice, casework and full representation. Legal aid also needs to be available to ensure that those who need that sort of support but cannot afford it for themselves can have access to it. Otherwise, only the rich and the powerful will have



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access to justice; and that is not a justice system as we would understand it.

Q3 **Chair:** Ms Brimelow.

Kirsty Brimelow: Thank you. I will start by looking overall at the society contract, and move briefly on to practicalities. Access to justice is one of the key pillars of a functioning liberal democracy. It also links to a society that functions well. It links to rule of law. What is rule of law? I always like some of the philosophical links to its being one of the stars in the constellation of political morality. Often you will see that intersection.

Practically, what does it mean? On the level of a person who has a dispute, who has a dispute forced upon them, or some of whose rights are taken away, for example through detention, they will look at what remedies they have. Those can vary in terms of urgency.

What do barristers do? They deliver advice, usually through being instructed by solicitors, but also through direct access. There are increasing numbers of direct access cases, and barristers are publicly available to be instructed. The advice can turn into taking the case to court, but much of that will also depend on what the risk is to the person, in some disputes, and looking at the cost risk. That is where legal aid comes in.

We will come on to this but eligibility for access to legal aid really applies only to those on a very low income, in terms of means testing. That means that in lots of cases, where people are engaged in different disputes, the person is not eligible for legal aid, and faces a huge cost risk and therefore an obstruction to accessing any remedy and justice. That is one issue.

If the case goes to court, barristers deliver justice for both sides. Many barristers work on a pro bono basis on different schemes to start the case going. Many still work on civil and criminal legal aid, but, overall, there is an issue about retention of barristers working in those areas. I will come on to that in more detail.

To come back to where I started, this is hugely important: we would like justice and legal aid to be on the same footing as services through education and health.

Q4 **Chair:** Ms Jana.

Rohini Jana: I concur wholeheartedly with everything that Mr Miller and Ms Brimelow have said thus far, but my focus is that, to me, access to justice is whether an ordinary person, at a stressful moment in their life, can understand their rights and get meaningful help to enforce them.

We talk about the rule of law rather a lot in our world. Essentially, it is a means to ensure that those in power—whether they are the decision makers at the DWP, at the Home Office or in local authorities—act and



are seen to act lawfully and with integrity. Access to justice gives us the mechanism by which, when they do not, we can redress this imbalance.

As Ms Brimelow said, access to justice is a fundamental pillar of our society. It is a huge part of how we think of the society that we want to create. Legal aid, as you mentioned, Chair, is the mechanism that we use to deliver it. It is a vital public service, as Ms Brimelow said, just like healthcare and education. We would not tell someone with a complex medical need that they should go away and diagnose and cure themselves; so we should think once again about the fact that we are asking hundreds of thousands, if not millions, of people to do just that when we remove access to justice via legal aid or alternative methods of obtaining legal advice and representation, as we have done through the cuts that have been made to the system in recent years.

Q5 Chair: Thank you. A lot of civil legal aid is currently governed by the Legal Aid, Sentencing and Punishment of Offenders Act, or LASPO. Under that Act, the Lord Chancellor has a statutory duty to secure that legal aid is made available. To what extent is the Lord Chancellor meeting that statutory duty to secure the availability of legal aid?

Richard Miller: That is a very challenging question, because it is at a very high systemic level. The evidence that we see shows that there are huge gaps in access to justice across the country. For example, we have mapped advice deserts across the country—areas where the general public do not have local access to the legal services that they should be entitled to. For example, over 40% of the population do not have access to a housing provider in their local authority area. These are people who cannot afford to travel to get the advice they need. Where there are court proceedings you need it in person, so remote advice cannot be the answer here, either. Not having that local provision is a major problem.

The statutory provision is quite high-level. It is quite vague. It has been used to challenge the Lord Chancellor in the past. A case was brought by Duncan Lewis Solicitors about 18 months ago, alleging that the Lord Chancellor was not meeting his statutory duty in relation to immigration advice. The Ministry of Justice chose not to fight that case and brought forward proposals for an increase in the remuneration rate to address the concerns that Duncan Lewis expressed.

We also raised this argument in relation to our judicial review on the Bellamy report and the fact that the Ministry of Justice ignored Bellamy's findings and put forward a much lower increase for criminal legal aid lawyers than was required. In that case, the court said it did not consider that the Lord Chancellor had failed to meet his obligation, but also said in very strong language that without a significant investment in legal aid in the near future it would not be unreasonable to say that the system was approaching the point of collapse. It felt like they were saying, "No, not yet, but we are not that far away from this."



One concern about the duty is that the only way to enforce it is by way of judicial review. There is a limited number of bodies that have standing to bring a judicial review of that nature, so it is not an easy issue to hold the Lord Chancellor to account for failing to meet that obligation. The fact that it has been raised on both the civil and the criminal side, and that there have been clear warnings that the point of breach may be close, is telling. The fact that for large swathes of civil legal aid we have still had no increase in remuneration rates, and firms and lawyers are still pulling out of this work, year on year, raises red flags about whether the Lord Chancellor is meeting his duty.

Q6 **Chair:** Does anyone want to add to that?

Kirsty Brimelow: There is a duty, as you will know, under section 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which sets out the Lord Chancellor's functions, including ensuring that legal aid is made available. The oath of the Lord Chancellor also includes that. The point that I want to make about why it is not being met is that, first, LASPO failed to align with the recommendations of the Jackson review. In particular, that means that serious and important cases where legal aid was available previously are now out of the scope of LASPO. Those predominantly cluster around human rights claims against the state that do not have a personal injury element to them.

An example is a case that was very well publicised, not that long ago, relating to an actor who was quite famous for having played Billy Elliot when he was younger. He wanted to bring a claim for false imprisonment against the police, and an assault claim. Under means testing, because he was not in the bracket of income support, even though the advice was that he had a very strong case and an 80% chance of winning, he had to consider that 20% chance of losing the false imprisonment claim and potentially losing his house. He was on a modest income; it was impactful to him. Therefore, the claim went ahead on the basis of assault only, which comes within LASPO. The finding was such that he would have won the false imprisonment claim; so he was deprived of damages for false imprisonment because of the way LASPO was set up.

That has an extra impact, which is that it affects decision makers. If our public law decision makers—people making very powerful decisions, particularly around enforcement and using delegated powers—know that the chances of their being challenged are pretty minimal, that will bring arbitrariness to their decision making. There is a wider public interest in having a means to hold the state, including all the different public authorities and state bodies, to account. That is a clear example of someone being deprived of access to justice, on a very serious violation relating to false imprisonment.

The other point I would like to make, which has been touched on by Richard Miller, relates to the exceptional case funding. It is so low; the difficulty is that the obligation on barristers to take those cases under exceptional case funding means they have to be prepared to work at



extremely low rates. The rates are lower than you get in crime, which is a very low bar. That is not only my experience, but that of barristers whom we represent and my colleagues at Doughty Street Chambers. An example was given to me about a case with a junior practitioner working under exceptional case funding. She calculated that she was being paid £2 an hour. Clearly, it is not sustainable.

The impact, which we will come on to, no doubt, looking at the Hillsborough law, is that you will lose the capacity for lawyers to take cases. I did a check with Doughty Street Chambers, because I think that is the biggest set of chambers for family representation in England and Wales. They already cannot cope with the demand of cases. The way to increase the number of specialist barristers dealing with cases such as human rights violations, including inquests which are super important, is to increase the ECF to a reasonable rate. We would say that that rate should at least be equivalent to what the state barristers are paid.

To use an inquest as an example, in an inquest, representing the family, there will be perhaps seven barristers effectively all against you, representing the interested persons. That can range from the fire and rescue service to different NHS trusts, the Ministry of Justice, police, ambulance services and so on; whoever is involved. The message we are getting from members is that you feel outgunned. That will then come back to a principle of fairness and equality of arms—that the setting, right from the start, disadvantages those who do not have legal aid or who do not have wealth to pay for their own private representation.

We have a lot of people in the middle who are outside LASPO. That was the example of what I will call the Billy Elliot case. The legal aid rates are way too low, below even criminal legal aid rates, and there is also the effect of the fact that the opposition in these cases includes many barristers acting for different state bodies, who are properly paid. Why can that not be levelled up?

Q7 Chair: We have touched on quite a number of themes that we are going to deal with shortly—scope and equality of arms, and matters of that kind, which I shall pass on to some of my colleagues. Ms Jana, do you want to add to the generalities?

Rohini Jana: Can I add something briefly please, Chair? As a general observation I make the point that we simply do not collect the data that we need to answer your question. We do not have the data at present to determine whether or not the Lord Chancellor is meeting his duty. Every quarter, as many of you will know, the Legal Aid Agency produces statistics to show legal aid matter starts. I happen to produce a bulletin in relation to these. It shows you the completed cases and expenditure, so we know how many legal aid matters were opened, and how many were closed, but we do not know how many matter starts were needed. There is currently no national measure of legal need out there. We also do not know the outcomes that were achieved through the legal aid scheme. So a fundamental issue within the justice system, which I shall touch on



throughout my evidence this session, is that we do not collect the data that we need. There isn't a strategic approach to this data, which means we are not able to plan the services that we need adequately.

Q8 **Chair:** Is it collectable?

Rohini Jana: Absolutely.

Q9 **Chair:** Who should be doing it now, then?

Rohini Jana: We believe that this should be part of a national strategy around access to justice. Currently—forgive me; I do not want to segue too much—we have the legal aid sector, the legal support sector, the pro bono organisations and a host of other advice agencies, such as free legal advice agencies. They all do brilliant work. It is a real privilege to be a part of the sector. However, they are all siloed. The data that they all collect is not comparable, so we have no overarching picture of the justice system as a whole, and that is something we desperately need. To answer your question, Chair, we need that to assess whether the Lord Chancellor is currently meeting his obligations and responsibilities in relation to LASPO, at the very start.

Q10 **Chair:** Thank you very much. There are some questions from Warinder Juss.

Q11 **Warinder Juss:** To a large extent you have already answered the questions that I was going to ask you, and I welcome the comments that you have all made about what you consider to be access to justice. How does the present legal aid scheme affect providers and service users, and how does it impact early intervention and the cost to government?

Richard Miller: I will kick off on that. At the moment, there are a number of issues with the system. The first is the scope. An awful lot of work does not come within scope under LASPO. That means that when you see a client, you have to pigeonhole their different problems into things you can help them with and things you cannot. Prior to LASPO, everything was within scope unless it was specifically excluded, so you were able to deal with the client holistically. I think it has been an extremely retrograde step that you cannot now just deal with the problems that the person has. You have to pigeonhole everything and select which ones you deal with and which ones you have to send them off elsewhere for. That has been really problematic.

The means test is another major problem. It has not been updated since 2010, so every year fewer and fewer people qualify financially for legal aid. Three years ago the Ministry of Justice did a fantastic piece of work analysing the means test and the data, and coming up with a revised scheme for how it should operate. It was based on Joseph Rowntree Foundation minimum income standards so had a solid, rational underpinning. It was a brilliant piece of work that the Ministry did, and it has not been implemented. They announced it in 2023. It was going to be implemented in '24. In '24, they announced that, because of problems



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with the IT system and having to divert resources to deal with immigration legal aid following the Rwanda scheme, they did not have the resources also to implement the means test, so we were told it would be 2026.

We have repeatedly asked officials at the Ministry of Justice what the current Government's intention is with regard to the means test, not least because the thresholds and allowances need to be uprated for inflation since the announcement. We have not been able to get an answer. We still do not know whether the previous Government's announcement that this would be implemented in 2026 holds good or whether there is going to be uprating of the thresholds and allowances. This means test is urgently in need of implementing. If, because of the IT data breach over the past few months, or whatever, it still cannot be implemented in full, we need the existing allowances to be uprated, so that at least we bring more people into scope pending the full revamping of the scheme. That is an urgent piece of work that should have been done years ago but desperately needs to be done now.

We already touched on the issue of access to services and the fact that, because remuneration rates are so low, the number of lawyers and firms doing this work is dropping year on year so that even those who Parliament has said should be entitled to legal aid often struggle to get it. There is real difficulty for people. We published a series of heat maps setting out the access problems across a number of categories of law. We are working on some revamped versions of those maps, which should be published in the next few weeks, so hopefully we shall have some updated figures and illustrations showing the position as of today. There are huge problems even for those Parliament has said should be entitled to legal aid. All in all, the system is not remotely working as it should. There are problems across the board.

We did some work on the remuneration rates. We commissioned Frontier Economics to analyse the situation. They looked in detail at housing and family legal aid. In housing, they found that 100% of their sample was loss-making. That was even allowing for when they were able to get inter partes costs on civil cases that they won, against the other side, and got the costs back at private rates. They were still loss-making, even allowing for that.

In family, more than 50% of firms were loss-making. Those who were doing private law work—dealing with domestic violence cases—were almost universally loss-making. Those doing care proceedings were more likely at least to break even. Even there, it was marginal, and if the rates are not increased soon they will also all be loss-making. Family rates have not increased since 1996 and in fact they have been cut in the interim. That is what we are talking about, here. That is why it does not make economic sense for firms to do this work, and that has to be addressed.



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- Q12 **Warinder Juss:** Before the others come in, I may be wrong but my understanding is that private family law cases are not included unless they involve an element of domestic violence.

Richard Miller: That is correct.

- Q13 **Warinder Juss:** So how does that affect those private family law cases where they just cannot get legal aid?

Richard Miller: What we see there, more and more often, is that people will go to court as litigants in person. That brings in a host of additional problems. First, they have to navigate the systems themselves without assistance, and some of them really struggle to do so. It has a real impact on the courts because what we have seen is that litigants in person are more likely to go to court rather than trying to resolve things through mediation and negotiation. Hearings are likely to take longer because the judge has to spend more time explaining to them what is needed and what everything means, and the cases are more likely to go to a fully contested final hearing, because the parties simply do not know what a reasonable settlement looks like, and therefore do not know what they should or should not accept. So it has quite a significant burden on court time.

There is a problem with the official statistics in relation to the impact on the courts of litigants in person, because those stats lump together those cases where the party is taking no part in the proceedings whatsoever, so everything goes through by default—they are treated as a litigant in person—with those where they are actively trying to manoeuvre their way through the court system. When you average out those two classes of client, it looks the same as for represented parties, but for those who are actively trying to fight their way through the system the impact on the courts is significant. Any judge who has ever had a litigant in person before them will tell you the same thing. It takes a lot longer; it is a lot more difficult.

We have the added point that in those cases where there are allegations of abuse and the alleged abuser is not represented, it leads to the abuser having to cross-examine the alleged victim in person. We have brought in a scheme to try to prevent that from happening; it is called qualified legal representatives. Unfortunately, that scheme simply is not working at the moment. The Government brought it in on the basis that they would pay these qualified legal representatives at legal aid rates. They simply could not find enough lawyers willing to do it at that rate for it to operate effectively. Even with the increase in rates that they have made, it is still not attracting enough lawyers to do this. You have a situation where, effectively, judges are looking at cases and saying, “We need a qualified legal representative; we can’t get one,” so they have to find workarounds as to how they deal with that. The whole qualified legal representative scheme costs money that could be put into providing proper legal aid for people, and it is not working either.



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Rohini Jana: If I may jump in with something, in preparation for today's evidence session I spoke with a number of our members and some of their clients. One particularly memorable story that I heard goes to this very point. This involved a young mother whose marriage was breaking down around allegations of sexual abuse, with her ex-husband as the alleged perpetrator, the abuse being perpetrated against her son, who was five years old. She was holding down two jobs; she was working part time, managing the childcare arrangements herself and was earning £18,000. Under the current financial thresholds of the means test, which is still in place, she was deemed to be ineligible for legal aid. She faced her ex-husband, the alleged perpetrator of sexual abuse against her young child, in court. He had a full team of legal advisers. She spoke to me about having to Google terms in relation to the court proceedings on her phone under the desk throughout the proceedings because she could not understand what was happening. I cannot begin to imagine how emotive and horrendous that must have been, but that is the reality that a number of our clients are facing.

I spoke to someone else who had been deemed ineligible for legal aid under the current means threshold. She was incredibly disabled and needed urgent adjustments to be made to her housing in order to make it habitable. She was £4.50 over the threshold and was deemed to be ineligible. One of our member firms took on the case on a pro bono basis. We have to remember that for every client who is helped on a pro bono basis by lawyers there are thousands, if not hundreds of thousands, of people who are not and who do not have access to that advice and representation.

I want to flesh out what Richard was saying in relation to the means test. We have covered so much ground in just five minutes.

Chair: We have; I am impressed.

Rohini Jana: I want to flesh it out with some numbers. I find some of them absolutely staggering. The research that the Law Society undertook together with Professor Hirsch showed that, in order to be fully eligible for legal aid as it currently stands, a single person needs to be surviving on just £9 a day after housing and general living expenses. That is pretty much the cost of a coffee and sandwich at any number of high street coffee shops that you may have passed on your way in today. I find that absolutely staggering. Families with two children have to be surviving on £41 a day, so we are talking about 81% below the minimum income standard in order for that recognition to apply and for you to be eligible for legal aid as things currently stand. We, together with the Law Society, urge the Government to implement these changes urgently.

I also make the point that we should not have let this go for so long. These thresholds were last increased in 2009 and the means-test review was undertaken in 2022. A huge amount of inflation occurred in that period of time. I will talk later about inflation when we discuss fees more



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generally, but there is absolutely no way we should be allowing that much time to pass, given the skyrocketing rates of inflation we are all seeing, before a review is undertaken. As part of the national strategy, we need to make sure that our mechanisms are updated on a regular basis, so we never have these issues again.

Kirsty Brimelow: The Bar Council's position absolutely agrees with everything that has been said. Means testing is so low; it needs to be increased to provide meaningful access to justice. It simply does not provide meaningful access to justice currently.

We also looked at early legal advice. A report produced by the Bar Council with the Access to Justice Foundation details the economic value of free legal advice and the free legal advice sector. A key stat from it is that every pound the Treasury spends on legal advice saves the public purse £2.71, so there is a nearly threefold saving on investment.

Domestic violence is a really important issue. The Bar Council's position is that there should be full eligibility to legal aid for those who are alleging domestic abuse, so the current restrictions should be lifted.

The QLR issue has been raised. Just before Christmas, the Bar Council issued a report which had input from about 100 family law barristers. That addresses QLRs and the lack of them; it addresses the reasons for that and also points very strongly to the issue of retention of family law barristers, because there has not been any increase in legal aid for them since 1996. So there are issues across the family bar sphere. It is perhaps not always as prominent because of the way the proceedings take place, in private. This seems to have lacked that oxygen. However, there is a focus on violence against women and girls, and many of those cases are dealt with in the family court. There, barristers are needed to represent and ensure that those cases are heard properly.

In answer to your question, it is very important, and currently it is completely failing. Just to add to the information given, there was one uplift announcement made on 1 December 2025 in relation to housing and immigration legal aid fees. That is the first major civil legal aid fee increase since 1996, and it is £18 million a year. I am not sure when it will come in, but it is a very small amount of money in relation to need. I also agree with the point on data, identifying exactly what that need is. If you have the data, you will have solid statistics to bring within LASPO those that are currently out of scope as well.

Chair: We are covering a lot of ground very quickly. I say to the witnesses, I am sure unnecessarily, that there is no need to repeat what has been said, and there is no need for members of the Committee to ask questions that have already been asked.

Q14 **Warinder Juss:** Following on from what you said, Mr Miller, would I be correct in thinking that, given the number of litigants in person and the delays that occur with judges having to take extra time to help them, if



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they had proper legal representation it would take less time to deal with those cases, so ultimately it would help to reduce delays in the court system and save costs in the long run?

Richard Miller: Yes.

Q15 **Warinder Juss:** Have you looked at any other jurisdictions? Do we have something to learn from the way their legal aid systems work?

Richard Miller: We have looked at a number of other jurisdictions. There is one on which we focused recently. The Netherlands run what they call the high-trust model. We also think lessons could be learnt from the contingency arrangements brought in following the data breach. A lot more had to be delegated down to firms. What that means is that, rather than Government officials taking decisions at various stages in every individual case, a lot of that decision making was delegated to the professionals who represent those clients and know the case, know what is needed and have the professional judgment to decide how things should be taken forward. I think that level of high trust in your expert providers who run the cases has scope to significantly reduce bureaucracy, which would help with the economic case for doing legal aid and also speed up cases so it would enable firms to provide advice more swiftly and progress cases quickly without having to keep going back to the Government agency and await decisions. A lot could be learnt there in terms of better, more efficient and more cost-effective ways of running the system. The current approach is rather penny wise and pound foolish, frankly.

Kirsty Brimelow: If it helps, on the family courts statistics with litigants in person, in 2024 there were 21,356 private family law cases where both parties were unrepresented. That makes up 46% of all disposals in private family law. To make a 10-year comparison, in 2014 there were 13,107 private family law cases where both parties were unrepresented, making up 33% of all disposals in private family law cases. You can look at those stats in more detail. We can always send them through, but they come from the MOJ.

Added to that, touching on family but looking also at the High Court and your question about litigants in person, one other issue with backlogs and the time of the court being used is that you will also have a litigant who is simply in the wrong jurisdiction. They are trying to take a judicial review case where they should be sorting out their street homelessness in the county court. We also have anecdotal evidence—you will be better able to help on this than I can—of MPs in particular still getting lots of constituents with issues to do with immigration and housing, so that demand is high. Legal aid is really not there, or it might be there for those who are on income support, so legal aid is then cutting out the working person. If you have legal aid for those on income support, you then have an issue with capacity of lawyers to represent because of the rates being paid to lawyers. You have all these double edges around it.



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As for litigants in person, plenty of street homelessness cases end up in the High Court. They are eligible for legal aid and legal advice. Why do they not have a lawyer? That can be only because there is no capacity left for lawyers to take those cases. I will give you an example that I have seen in my experience. There is a case involving street homelessness and the litigant in person is literally there with their sleeping bag saying, "I'm camping outside my council office. They know all about me." You have the local authority on the other side with lawyers saying, "There is no public law matter here to be determined." The judge will then spend a good hour, or two hours, trying to go through it, sometimes with the litigant in person, explaining it, sometimes sending out the lawyer to contact the person in charge of housing on this particular issue. It is cold; they are sleeping on the streets, etc. It takes a huge amount of time. That comes back to lack of advice and funding. I do not know whether that helps, but perhaps it brings it to life a little in civil as well as in family.

Rohini Jana: Since LASPO, there has been a 340% increase in unrepresented parties seeking protective injunctions specifically. In the Government's mission around reducing violence against women and girls, this has to form a core component of that. We need to build up capacity within the family courts and address some of the deficits we are seeing currently with capacity, funding and family firms being willing and able to take on cases in this area.

Q16 **Warinder Juss:** Ms Brimelow, you already confirmed that the exceptional case funding scheme is not effective in securing access to justice so I will just take that as an answer, unless you have anything else to say.

Kirsty Brimelow: We can certainly expand on that.

Richard Miller: From the point of view of solicitors, the idea of exceptional case funding was that for all the cases coming out of scope under LASPO, there would be the safety net: if the case none the less gave rise to a human rights issue, there would be this protection. It has been estimated to take anything from four to six hours to complete an application for exceptional case funding, with no guarantee that you will get the funding in the end. We are seeing pro bono lawyers sometimes assisting a client to apply for exceptional case funding and the Legal Aid Agency taking that application, not on the basis that there is a solicitor there taking on the case, but, on behalf of the client, saying, "Yes, we will grant exceptional case funding," with the idea that they would then go and find a lawyer who would take on the case. We are finding very often that, even in cases where the LAA has in principle granted exceptional case funding, the client cannot find a lawyer who will take it on, because these are areas that usually are not within the scope of legal aid and, therefore, lawyers who have the expertise in those areas just are not interested in taking on those cases. The combination of the time and cost of putting in an application in the first place, and the difficulty of finding a



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lawyer with the right expertise for those cases means that the system is not working effectively.

Q17 **Warinder Juss:** Those six hours are not remunerated?

Richard Miller: Exactly.

Rohini Jana: From another perspective, as Mr Miller mentioned, this was intended as a safety net and to protect those cases because so much was taken out of scope with LASPO. The intention was to protect those human rights cases and cases involving rights under the ECHR and the EU. During the passage of the Bill, the Government anticipated there would be between 5,000 and 7,000 applications made annually. In the first year, about 1,520 applications were made, of which just 4.5% were granted. Those numbers have gone up, but given this was originally intended to be a safety net, the numbers demonstrate that it simply is not acting in the way we all anticipated that it would. It is too complex for individuals to complete the application process by themselves. You will hear and will have read a lot of evidence in preparation for this particular inquiry about the financial viability of legal aid firms. With profit margins so very low, there simply is not the appetite within the sector to take on this work, which is at risk; it is just too risky for providers to do it.

Kirsty Brimelow: This is the cost risk to which I referred in the opening, which is really important. If you are advising a client to go ahead when the position is that, unless a personal injury is included in that human rights claim and claim against the state, they will be liable for the costs if they lose, that is a huge risk for somebody who has basic means. They will not be prepared to take it. The figures on civil work show that it has been reduced by about three quarters. I can get the exact figure, but post-LASPO claims being brought have been reduced by about three quarters. That is a reflection of both the funding but also very much the cost risk. That was addressed by the Jackson review and was not followed. It is very significant.

Q18 **Sir Ashley Fox:** Mr Miller, can I take you back to the cost of the updated means test? You said that the Ministry of Justice did some work and came up with a scheme in 2022. If that had been introduced, do you have any idea what the cost would have been to the taxpayer?

Richard Miller: I cannot remember the exact cost. I know that the Ministry at the time put together some figures that showed what the cost would be. I know they said that about 3.5 million more people would be brought within scope for criminal legal aid and about 2.5 million for civil legal aid, but obviously that is the number of people across the country who theoretically are eligible.

Q19 **Sir Ashley Fox:** I assume we are talking of tens of millions of pounds.

Richard Miller: I do not think it was many tens of millions. My best recollection is that it was in the low tens of millions.



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Q20 **Sir Ashley Fox:** Do you have a figure for me, or not?

Rohini Jana: The point I wanted to make to you is that it depends on how you calculate that cost. Are we talking about the cost to the Ministry of Justice?

Sir Ashley Fox: Yes.

Rohini Jana: Or are we allowing for the fact that when people do not get legal advice or representation there are lots of knock-on effects? Legal aid as it is currently is managing crises. If legal advice or representation is provided at an earlier point, which was the theory behind the means-test review, the knock-on effects on other Departments, such as the NHS and Department for Education, for example, will be less. How would you like us to calculate that cost?

Q21 **Sir Ashley Fox:** I am assuming it is the budget cost to the Ministry of Justice. We do not have a figure.

Rohini Jana: We do not have a figure.

Q22 **Sir Ashley Fox:** That is fair enough.

Richard Miller: The figure exists and was published by the MOJ at the time, but I cannot remember offhand what it was.

Kirsty Brimelow: We can supply that information.

Q23 **Sir Ashley Fox:** Mr Miller, you are here on behalf of the Law Society and Ms Brimelow is here on behalf of the Bar Council. Effectively, they are the trade unions of the legal profession. I do not blame you for advocating for a lot more money to be spent on legal services—that is your job—but I do not detect any appetite on behalf of taxpayers for spending more money on lawyers, and I certainly do not see legal aid being treated like the NHS, which I think is a rather fanciful wish if you don't mind my saying so. Do you have any recommendations to us to improve access to justice that do not involve very large amounts of taxpayers' money?

Kirsty Brimelow: First, it does not involve very large amounts of taxpayers' money. This is the point. The figures we are talking about are often rounding-up figures in looking at Treasury spending, or they are slightly more than that. We are talking about tens of millions, not very large amounts. Secondly, I push back slightly on the description of it being all about lawyers and money. It really is not. Of course, the Bar Council is the voice of the profession. We are looking at retaining barristers to carry out part of what is required in a liberal democracy, which is a strong rule of law, so it is contributing to that. That principle is very important to barristers, particularly those working in legal aid, because, frankly, if you were up for making lots of money you would not be working in legal aid in the first place, because a huge amount of that involves working pro bono and very long hours. You are driven by the justice of the person you are representing. I do not recognise that description at all in any of my legal aid colleagues.



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I will come to your question about other suggestions, but we cannot step around this because it is at the core of the system functioning properly. In any court, the roof is falling in, the IT does not work, you have a litigant in person who needs huge amounts of help, the court staff are spending huge amounts of time trying to put a bundle together for the litigant in person and the person is traumatised about going to court because they know they will be questioned by somebody whom they are alleging has abused them. All of this shows that the system needs money. I do not shy away from that. That money should also be paying the barristers who are helping that justice to be delivered, so that cannot be taken away.

In answer to your question, how do you persuade? I do not see it as fanciful to think that it should be seen as akin to part of the NHS. The reason it is not is that people do not always need lawyers, so they will think, "Well, I'm not going to need one and therefore I don't care about all those people who do." The reality is that more people need lawyers than you think; it is just that they have the money to pay for them privately. Therefore, you are really creating a two-tier system in terms of who has access to justice, and that is what this whole discussion is about.

How do you persuade, outside money? Lots can be done outside money, including looking at efficiencies within the system, but that comes back to why that is inefficient. Quite often, it comes back to wasted investment or investment in the wrong areas. With crime, efficiencies are key. We see lots of waste of money that goes to the Ministry of Justice because it is going into the wrong area, sometimes on the wrong tech. We see lots of waste on contracts. I give as an example PECS contracts, where they do not get people to court and in the dock on time. There is more wasted money. There is a lot you can do around that, but I would keep the focus in this session on legal aid and its importance. I hope we can persuade Parliament, given the job you do, how key this is, because it is almost one of those areas where, until it is not there, you do not always appreciate it.

When people hit a point where they have a loved one who has suddenly been involved in a terrible accident, or an illness develops, they can find themselves in a position where they need legal advice. Yet they are a working family and not on income support, and have nowhere to go, with no barristers or lawyers to represent them. Then it is brought into sharp focus. So it is really looking at the overview before we have to look at each case individually, but it goes back to principle. There are lots of efficiencies, but let us not shy away from the money; it really is not that much and the investment repays as well, in that it causes savings in the long run.

Richard Miller: One of the things on which I would reflect is that when "Mr Bates vs. The Post Office" was broadcast, there was an outcry across the country about the injustice that had been done to those postmasters. The country does care about justice, and when it is brought into sharp



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focus like that, people care deeply that justice must be done. I do not think it is a forlorn hope to say that the country will recognise that justice is important. I also reflect on the Hillsborough Bill. What we are seeing there is that we want to provide legal aid for the families. Publicly funded lawyers are already provided for every state body that is ever involved in these cases at a vastly higher rate, perhaps 10 times the rate, paid to legal aid lawyers. If there is a concern about taxpayers' money being spent on publicly funded lawyers, surely that is what we should focus on, not on legal aid where we are finally giving ordinary people the chance to get the justice they need.

Rohini Jana: Could I come back to Sir Ashley as well?

Q24 **Sir Ashley Fox:** If you could try to answer the question, that would be appreciated.

Rohini Jana: I fundamentally disagree that people do not care about justice.

Q25 **Sir Ashley Fox:** The question was: do you have any recommendations for improving access to justice that do not involve large amounts of taxpayers' money?

Rohini Jana: I do. A national strategy that looks at justice as an entire concept would be one of them. Collecting the correct data so we can best use our resources to help the most people would be another. I disagree with the suggestion that people do not care about justice. We are talking about Justice with a large "J"—a capital "J", as it were—this afternoon. When you boil it down into its fundamentals, people do care about justice with a small "j": they care about their housing, their children's education, their employment and the community care that their elderly mother is receiving. These are all justice issues. What we are talking about today underpins all of them.

I could not agree more with Mr Miller's point. We are seemingly accepting of large amounts of money being used to pay and prop up the state in relation to justice issues and we should be more comfortable in redressing that balance so that ordinary people have the access to justice they need and that I believe they care about.

Richard Miller: Ultimately, what it comes down to is that it is far more expensive to run the system from crisis to crisis than it is to fund it properly to run effectively. If you provide the early advice, you do not end up with huge and expensive disputes. If you enable someone to resolve their social welfare issues at a relatively early stage, they do not run into health problems because of the stress on them caused by mould in their homes and all these other issues weighing down on them. There are huge savings to the health service, the rest of the justice system and the prison system, if we stop people going into the criminal justice system, in just funding the system effectively to run as it is supposed to. Running it crisis to crisis is hugely expensive.



Kirsty Brimelow: I agree with that. Coming back to your question, Sir Ashley, it is that point of what happens when you have somebody with a grievance or a complaint. It is that flashpoint. Can you divert it in some way through alternative dispute resolution, and how can that be done? It can increase, and then you get sides who become polarised and entrenched, and you can end up in litigation. Not everything needs to end up in litigation. I certainly encourage more mediation and ADR. On the criminal side, there are lots of representations or proposals from the Gauke review coming through in the Sentencing Bill, and there are also recommendations on diversion. It is not an academic exercise of "Is there potentially a crime here?" In fact, is it in the public interest to prosecute it? Often it is not, particularly when the years go by. Divert out and you can address what is often a lot of social breakdown. Often you might have addiction issues and so on, where some treatment would save the money that is going into prosecution and all that that entails. Diversion away would also be a good focus.

Chair: I will move things on. I am conscious that we are halfway through our time and a quarter of the way through our questions, which shows my chairing skills have not improved over Christmas. We are going to Linsey Farnsworth in a moment, but I have two short interventions from Pam Cox and Neil Shastri-Hurst.

Q26 **Pam Cox:** Thank you. I want to take you back to the idea of a national strategy around legal aid. Some of the foundational legislation that set up our current system was passed in the wake of the second world war, alongside the setting up of the NHS and other services, so it fitted very much in that way of thinking at that time. The legal aid sector is very fragmented, as you said. Which agencies do you think would be best placed to lead such a strategy given the fragmentation? What role could the legal profession take in leading such a strategy?

Rohini Jana: You currently have a sector that is incredibly committed to the idea of justice. Legal aid professionals undertake hours, if not days or weeks, of unpaid work together with the Ministry of Justice to try to improve the system. I have no doubt that they are very committed to this idea, but this needs to be taken forward by the Government, and we need to be approaching justice far more strategically than we are at present. To return to Sir Ashley's question earlier, we could better spend money if we had the data that sat behind the initiatives that we want to implement, if we had an idea of what initiatives work best with particular demographics, and if the funding was more centralised so that everyone knew exactly how much funding they could expect moving forward. That would enable a much cleaner, better system that was more able to cope with sudden crises.

During covid, the legal aid sector suffered immeasurably. If that was contained within an entire system and we had adopted a more strategic approach to the delivery of justice, we could have had contingency measures in place. We will touch on that, presumably, when we speak



about the LAA data breach that we saw earlier this year as well. To answer your question, I believe it needs to be a Government initiative and driven forward by the state, with support from the profession.

Kirsty Brimelow: We really would not want another full inquiry, because there are so many independent reviews, which in themselves cost lots of money. We have all the information. We clearly need multi-year agreements on legal aid between the professions and the Ministry of Justice. It feels like the legal professionals are constantly locked into negotiations with the Ministry of Justice. As Richard Miller said, it is because of crises that are just increasing. On crime, I am not going to go into it in detail, but, for example, an additional £34 million has been announced for criminal advocacy. The detail on that is zero, currently. It will all take time. If there was an index-linking or a pay review-type body, that would save the constant back and forth, and the energy, time and expense that it takes each time.

We have sufficient data. We know what inflation is. We know what reasonable rates are. As a reasonable starting point, we can compare what the Government pay their lawyers when they are on the opposite side on cases. It really is about taking the argument to the Treasury, if the position is that there is a political will for there to be access to justice as was set up. It really will involve a change around LASPO, an increase in criminal legal aid, and an increase in family legal aid. It simply cannot remain frozen as it has. I agree: we simply do not want more and more reviews, but we can build on what we have. Let us stop this constant crisis evidence-collecting in this way. It would be so nice to have one of these evidence sessions where we can focus on the people exactly under the legal aid, that is all running, people are being paid what they are being paid, it is all index-linked and we are not dealing with inflation and so on and so forth.

Richard Miller: I have one point to add. A number of different Government Departments are relevant here. You have ombudsman services that will relate to the Department for the sector that they operate in. You have pro bono largely in the Attorney General's Office. Local authorities provide a lot of funding for advice services locally across the country as well. I think it is the Ministry of Justice that needs to lead on this, but it needs to reach out and engage with all the other Departments that have a stake in the whole justice dispute resolution system.

Q27 **Dr Neil Shastri-Hurst:** Very quickly, and you may not have the details in front of you, but you are all making a very compelling case for more legal aid funding in order to have a long-term benefit and reduce costs across the board. I do not have a handle yet on whether there has been any concrete modelling in how increasing at the front end that legal aid funding would improve or reduce costs across the board in a variety of areas. Has that modelling taken place? If it has, can you share that with the Committee either in summary now or by writing back to the



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Committee afterwards?

Richard Miller: This has long been one of the challenging issues. It is the holy grail for academic research into access to justice. There have been numerous studies over the past 20 years looking at the cost-benefit of providing early advice. Every single one of those studies has shown that there is a substantial return from the investment. However, it is also fair to say that every one of those studies has methodological problems to them. The real challenge is that you cannot measure the counterfactual. You cannot measure what would have happened if this individual had not got advice and they went down this path instead. You cannot do that for one individual, let alone say what it would look like across a whole cohort of individuals. It is really challenging to come up with a hard, concrete, reliable figure for the saving that you get from that investment that you put in. If you look back over the history of the past 20 years or so, with the reduced investment in access to justice we have seen costs increase in a number of other areas that indicate the mechanisms that operate, but putting hard figures on it is a real challenge, and it is something that no one we have spoken to has yet been able to crack.

Rohini Jana: Not least because the fee schemes that we are talking about are wildly complicated and differ from practice area to practice area, so there is that additional complexity. Numerous people have tried, but we do not have an adequate model at this time.

Q28 **Dr Neil Shastri-Hurst:** Is part of that underpinned by the fact that, as you said earlier, there is not sufficient data across the board?

Rohini Jana: Exactly that, and there is a lack of interoperability among the data that we have. Different organisations are collecting data in different ways.

Q29 **Dr Neil Shastri-Hurst:** To a degree, we are doing things anecdotally here.

Rohini Jana: We are doing things in an incredibly piecemeal way. To your point about efficiencies, this is not an efficient or strategic way of doing things.

Kirsty Brimelow: The report from the Access to Justice Foundation and the Bar Council addresses, as much as it can, the data and savings. I refer to one figure. There was a three-times increase, potentially, in terms of expense if that early legal advice had not happened. We could certainly send that across. That does what it can. I agree that there is difficulty because there are so many "what ifs". I agree that, as has also been said, it comes down to data.

Rohini Jana: I am very sorry, Chair, can I jump in with one extra point? It is about the Green Book and Treasury rules for how we measure social value and cost-benefit. While there seems to be a push by the Treasury to measure social value cross-departmentally, we are not seeing that at



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the Ministry of Justice. It is very hard to demonstrate the actual cost of a particular model because the knock-on effects and benefits will be felt by other Departments, and we have no way of quantifying those at present.

Chair: Okay, let us move on. I am going to Linsey Farnsworth next. In the interests of time—and the questioners can specify this—questions will have to be to the one person who is most appropriate to answer, or we simply will not be able to get through.

Q30 Linsey Farnsworth: I will ask Rohini Jana the following question regarding the Public Office (Accountability) Bill, or the Hillsborough law, although it is obviously not solely related just to football incidents. We have talked about the new law and the impact on access to justice in terms of equality of arms and the suggestion of a need to rebalance remuneration based on who the lawyer is representing—state bodies and families. I do not want to go over that again in the interests of time, but do you feel that there are any key limitations to the expansion of legal aid in this area? What further changes would you propose to strengthen it?

Rohini Jana: Thank you very much. That is a really important question. It is very rare in legal aid that we get good news stories. It has been wonderful to be able to celebrate Hillsborough and the expansion to civil legal aid that it represents, and fantastic for all the families who campaigned so long and so hard for it. We are aware that this position is constantly evolving, so please take my comments on that basis. We are also aware that there is a potential capacity issue within the sector. It has been 30 years since civil legal aid last received an uplift in most areas. While we are incredibly excited from the perspective of equality of arms and families who have been through unimaginable loss having access to representation in this way, there remains a concern within the sector that there may not be the capacity within the sector to meet that demand.

There are any number of meetings going on around this between the MOJ, various representative bodies, ourselves included, the Law Society, the Bar Council, etc. As I said before, this is a constantly evolving position, but every single legal aid practitioner who practises in inquest is citing remuneration as being a significant area of concern for why they would not necessarily rush to do this work, despite the fact that they all believe in it passionately. It is essentially loss-making and hugely emotive.

We do not know currently how many inquest lawyers there are out there. Again, this goes back to the point that there is so much that we cannot measure within the justice system and that need underpinning it all for better data. We have a rough number of the number of public lawyers who may be interested in starting this work and retraining, but then there remain concerns that we may lose capacity in other areas of public law and civil legal aid if they all rush to do inquest work. These are concerns that we are worried about.



Another point that I wanted to make in relation to this was the interested person funding gap currently being envisaged. There is a friction point with the Bill as currently envisaged, whereby funding is only triggered once a public body is formally named as an interested person. The APPG on access to justice ran a Hillsborough meeting a few weeks ago that some of you very kindly attended, and we had a number of practitioners making the point that it could take months, if not years, for a public body to be named as an interested person. That is another little wrinkle that we will need to iron out as the Bill progresses through Parliament.

- Q31 **Linsey Farnsworth:** Thank you. That is very useful. As a former prosecutor, hopefully you will not be too surprised that I want to focus a little bit of our time on criminal legal aid. I will come to you, Kirsty Brimelow, I promise, but I start by asking Richard Miller a question in relation to the criminal duty solicitor scheme at police stations and in the court. I qualified as a lawyer in those two schemes some 20 years ago, and it was under pressure then, so I am quite interested to learn more about what the current state of those schemes is, and whether they are sustainable given the workforce pressures that we have already talked about in the wider justice system.

Richard Miller: The current situation is that those schemes are not sustainable. The numbers are dropping. There are growing numbers of duty solicitor schemes where there are fewer than seven duty solicitors on the scheme, which means that each one must be on duty for at least one 24-hour period every single week. The burnout rate for those who are left on these schemes is getting worse. The average age of duty solicitors now is about 51, 47% of them are over the age of 50, and only 7% are under the age of 35, so it is very much an ageing profession. In fact, I would go further; it is a profession that is becoming extinct before our very eyes.

The increase in rates from the Ministry of Justice recently has been very welcome. It means that, at long last, the Government have implemented Bellamy in cash terms. However, by the end of this Parliament, in real terms, we will be back to where we were before Bellamy reported and said that this system is completely unsustainable, it is seriously loss-making, and urgently needs significant investment if it is to survive in the longer term. The fact that we are not seeing a commitment to a regular increase is fatal to the system surviving more than a very short time. If firms are to see a business proposition for carrying on doing this work, they need to know as an absolute baseline that these rates will be maintained in real terms. We still need to build beyond that to rebuild the capacity that we lost, but unless we get as an absolute minimum the commitment to keep rates in real terms where they are, there is no hope for the system.

- Q32 **Linsey Farnsworth:** The fact about age is really worrying. It was always the younger solicitors who were sent out from my firm.

Richard Miller: It used to be the way, very much so, yes.



Q33 Linsey Farnsworth: Thank you for outlining that; it is really useful. Kirsty Brimelow, could I ask you a couple of questions on this area? Given the need for timely legal advice both to protect criminal defendants' rights and allow the police to do their jobs, what impact do the sorts of things that Richard has talked about have on access to justice, in your experience?

Kirsty Brimelow: This is particularly with the junior Bar and the instruction of the junior Bar, which is an ongoing concern. Solicitors will be the first port of call for the person who is detained, and then they will instruct the barrister. If there are not sufficient junior barristers, we have an issue of representation. In practice, cases are adjourned, so they go back because there are not sufficient barristers to represent the client or to prosecute. We have both sides, where cases are put back and adjourned because there are not sufficient lawyers. Again, it comes back to funding. Although we have a reasonable uptick now of juniors coming to the criminal Bar, certainly post the last statistics and post 2022, retention remains an issue. At the senior end, at the KC end, retention is a huge issue. Something like 25% of KCs are leaving criminal work to go into other areas.

Regarding the funding, very briefly, the MOJ has had deeper cuts than any other Department. Overall, funding for justice is 30.4% below where it would have been had it kept pace with the UK's inflation, population growth and economy. In other figures on cuts, it has declined by 22.4% per person terms between 2009-10 and 2022-23. The effects this has include access to justice. Representing those who are in jeopardy of detention is probably the most serious violation of rights that are happening in the Crown court. Right to life is in there, as is right to liberty. This is why it is key that you have barristers there who can act for both sides.

The announcement of an increase in legal aid needs to be brought in quickly, but, importantly, it needs to be brought in for the backlog cases. The difficulty is that the system has always been set up to be forward looking. Because of the delays we have, to say that you will get an increase in legal aid in two or three years' time when that case comes through the backlog is not an increase at all. It has to be on the cases that barristers are doing now in court, and that means it has to be retrospective, if you want to use that term. Actually, it is just current. That is a really big issue that needs to be taken up.

When there are deals, unfortunately, they have consistently fallen short. This is MOJ modelling. We are hopeful that the last deal that happened, where there was a shortfall, will be rectified by the MOJ. We are in discussions there.

If I could just add very briefly on Hillsborough, it is welcome that there is that expansion, with absolutely fantastic work by all those involved. It was very moving to see, in fact. It comes back to the amount of the ECF. Doughty Street Chambers, to give an example, does most of this type of



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work, and there is a real concern that there just will not be enough barristers to take that wonderful success forward unless the ECF payments are increased.

Q34 Linsey Farnsworth: That is very helpful, thank you. Going back to the criminal side of things, what is the knock-on practical consequence to the functioning of the criminal court system as a result of restricting early legal advice because of the sorts of issues that we have talked about?

Kirsty Brimelow: It is a really good question. In fact, if you have early legal advice, it has to be done properly where the evidence relied on is also served by the prosecution. Everything needs to speed up and be done properly. That then cuts out the delays. When it is, "Here is the forensic evidence of somebody's footprint or DNA," there would be very different advice from when there is no evidence in relation to that, and the client is saying, "I didn't do anything." If you say, "Here is a fingerprint. What happened then?", things might start to change. It makes a big difference as to what happens to the case and what it looks like.

Early legal advice can be effective as well in making representations to the prosecution. Is this a case that should be prosecuted at that level? Is this not a case that can be diverted away from the court system? In fact, it might be a case where a plea to a lesser charge could be offered. We are losing all of that because of the delays, everything waits until evidence comes much further down the line, and there is not, I would say, and certainly from conversations with the membership of barristers up and down the country, enough strong triaging by the Crown Prosecution Service of cases. Just because you can prosecute an offence at that level does not mean it is in the public interest to do so. Can we go back perhaps also to listening to advice from barristers who are prosecuting in court, who will recommend that it is a lesser charge? Somebody who is at the end of the phone can make that decision and say, "Yes, that is acceptable," obviously after consulting with the victims. That all seems to have dropped out of the system as well. That early advice is key.

Linsey Farnsworth: Thank you.

Chair: Thank you very much. We have dealt to some extent with means testing already, so I will not go to Pam. Vicky, did you want to come in?

Q35 Vikki Slade: Yes, if you don't mind. I am sorry to go back to it, but I am concerned, particularly with some things that you said, Rohini, about access to justice for people who are working versus people who are on universal credit. Linsey and I have both discussed a couple of cases that we have had where there has been custody and allegations of domestic abuse, where the women have been working, the men involved have been claiming benefits and have been able to claim full legal aid. The women have had to turn to their families, who have got into debt. From the experience of the cases I have dealt with, there does not seem to be



much rigour in establishing whether someone should be given legal aid based on the fact that they have universal credit, or whether the system is being manipulated. With that sort of background, we know that passporting happens with some benefits. Can you share your thoughts on the benefits to providers and the Government—we know what the benefits are to the individuals—of those benefits being passportable? What would the consequences be in terms of access to justice if they were not? Is there any advice or recommendations that you could give about how that arrangement could be shifted so that it feels fairer to everyone?

Rohini Jana: We would absolutely recommend that those who are in receipt of universal credit be automatically deemed to be in financial need for the purposes of the means test. From a provider perspective, that would save a huge amount of time that providers currently spend checking financial eligibility against the means threshold. That is unbillable time for providers. If we could speed up that process and if providers did not have to do that, it would make both practices a little bit more financially viable.

Just as a slight segue, LAPG recently conducted some research into unbillable tasks. Eligibility was one of them, and testing eligibility for the purposes of the means threshold. Providers on average spend almost two hours or a quarter of their working day on unbillable tasks. If you were to reduce that, that would automatically make legal aid practice far more financially viable than currently.

One thing we have not addressed today is the perception of justice. In those instances, it is very striking to me that there is no way that those clients and individuals you are helping through your constituency services will perceive that they are receiving justice in this particular equation. To go back to the Chair's very first question about access to justice, there is no way that anyone in this room could argue that the client who was sitting there googling terms in family proceedings, trying to understand what was going on, was receiving access to justice. Yes, to your point, there are benefits for the individual, the client and the provider in passporting universal credit automatically and removing some of those additional administrative barriers, as well as having a rethink about how this system should be working and what we want. Again, I am very sorry to harp on about this point, but we need to take a more strategic approach to access to justice. What would be fair in those circumstances? Let us apply that. What do we need in order to make that happen? What is the legal need here, and how do we address and best meet it?

Vikki Slade: Thank you.

Chair: Thank you very much. I will move on to Tony Vaughan. You may wish to elide some of your questions. I leave that to your good sense.

Q36 **Tony Vaughan:** Thank you, Chair. Thanks for all your answers so far. I want to ask about legal advice deserts. I know, Richard, that you



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mentioned that already. We have had a very large number of legal aid providers disappear, and we have areas of the country where, as you said, there is virtually nothing around. In Kent, we have zero community care solicitors for an area where there is huge litigation against Kent county council and disquiet and dissatisfaction with how it is complying with its legal obligations. In a general sense, to what extent are those who are eligible for legal aid encountering themselves in a desert? What is the scale of this? What areas of the country are particularly affected?

Richard Miller: I have some specific figures. Data from February 2024 shows that in community care 70% of people across the country do not have access to a local provider, 90% do not have access to an education law provider, 85% do not have access to a welfare benefits provider, 44% do not have access to a housing provider, and 63% do not have access to an immigration and asylum provider. With the maps, we have information broken down across areas. I do not have those figures immediately to hand, but we can provide that data to the Committee afterwards.

The other thing to bear in mind is what this actually means in practice. There will be plenty of circumstances in which face-to-face advice is what is required, whether because of the nature of the individual or their problem, or the value of the local knowledge of the local authority, who to contact there and how they approach things, or there is a court hearing that therefore needs an individual in person there. Remote advice has a place. It can help to plug some of the gaps, but it is not sufficient. I would go further and say that having one provider accessible is not really sufficient either, because very often that one provider will have reached capacity and will not be taking on new cases, or there might be a conflict of interest so they cannot take on that individual client. There may be a whole host of reasons that does not work. They may have had a breakdown in the relationship from previous work that the firm has done for the individual. There is a whole host of reasons why having just one provider may even at that level be insufficient to assure access to justice. If we could at least assure one provider per area, that would be a major step forward from where we are, but that is only a step forward; it is not the end goal that we should be aiming for here. It is a real problem. It means that people cannot get access to the services that they need and that Parliament has said they should be getting.

Q37 **Tony Vaughan:** Richard or Kirsty, in your experience, when you have people who are in litigation representing themselves, what effect does that have on the legal process and the costs that have to be spent on the court time, the judge, etc.? What additional pressures or extra costs does it create in other places when you have somebody in front of a judge without any legal expertise?

Kirsty Brimelow: It is complicated in criminal cases. From my experience and the experience of my colleagues, it clearly takes more time because the judge has to explain to the litigant in person, the defendant in person, what is happening. Directions to move the case



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forward will not generally be complied with by the person representing themselves. That can also add pressure on the other side. The prosecution might have to take more of the work. The judge might have to come in and take more of the work. It is difficult to quantify, but all that will happen.

In civil cases—Richard referred to this earlier—yes, it is definitely the same thing: the judge has to get more involved. As you probably know, there is guidance to judges in the civil area on how they should handle litigants in person. It is that common. It is useful to look at that because it shows the steps that a judge is expected to take. You then potentially get appeals. A decision has been made against the litigant in person. They know they have lost but they will not necessarily understand the niceties of whether this is a public law matter, or a judicial review case in the administrative court, and therefore know that they can appeal. You then put further pressure on other parts of the system. The same is true with crime.

The other aspect is in terms of the data on how quick or slow it is. You must have a little bit of caution, as Richard said, with the quickness of it, because sometimes the data will capture that it is very quick because the litigant in person is, in fact, hardly saying anything. I gave an example of a street homelessness case. In fact, the application that I saw was that the person was there putting their sleeping bag on the bench, and did not really have anything further to say. That in some ways could make the hearing quicker, but it does not mean that justice delivered for that person, because all the information needed for a just decision to be made by the judge is made much harder. You have to think about what the result is as well.

Q38 Tony Vaughan: Are there any other considerations here that we need to bear in mind when we think about how to advocate for more money? Ultimately, we can say that by spending on legal aid you save money elsewhere. I heard what was said, and I have seen some of the work that has been done to say that if you spend £1 you get £3 back. In a slightly more short-term and slightly more proximate way, your point, Ms Brimelow, was being careful about the savings on court time, but we have heard other points made. Are there any other considerations where spending money on legal aid gets you money back in other areas? I was wondering about poverty reduction. I do not know what work there is on where what you spend on legal aid you get back on poverty reduction, as opposed to just general savings.

Richard Miller: There is one specific one that I want to see looked into, and I do not know whether the data even exists. That is how many family litigants in person have applied for a pension-sharing order. If someone does not get a pension-sharing order and ends up reliant on state benefits for 20, 30 or 40 years of their retirement when they could have had a share of their spouse's pension, that is a huge cost to the state. I would love to know whether litigants in person in family cases are



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applying for pension-sharing orders, and, if not, how much the state is losing as a result.

Rohini Jana: May I answer that, Chair? I happen to have a figure for it. In 2024, only 12% of divorces involved a pension-sharing order. As you know, it is not mandatory on divorce, but it is leading to a large proportion of women facing poverty in old age. This is a huge problem that we are facing with women living longer. It tends to be women who are single, divorced or widowed. Divorces tend to occur when women are in their 50s, I believe. I think 25% of marriages end when women are in their 50s. The average pension that a woman has when she reaches pensionable age is £69,000. The average pension that a man has is £205,000. Without pension-sharing orders, changes to the law being made or legal advice representation being made for separating couples, pension-sharing orders are far less likely to occur, leading to said poverty.

I want to pick up on the point that legal aid underpins a lot of the Government's missions, such as safer streets, fairer outcomes and more opportunities for children. We are not really considering that. Mr Miller mentioned the fact that 90% of the population have no local provider for education law. Education law currently under legal aid only covers special educational needs, but there are 400,000 children out there with an education, health and care plan at the moment. There are 1.2 million more children with special educational needs, and their parents need help navigating a very complex legal system in relation to the provisions for their children. That is yet another outcome whereby legal aid, if not making things more efficient from a financial perspective, improves outcomes for people, which is court omissions.

Q39 **Tony Vaughan:** Thank you. Chair, if I may, I have one last question on unmet need, etc., before I move on to legal aid remuneration. Within this general duty to make arrangements under section 1 of LASPO, I have heard it suggested that the Secretary of State could have the power to make a grant to create a legal advice centre; say, to give £100,000 or £200,000 to somebody to go in and create a legal advice centre in a legal aid desert in exercise of those powers to make arrangements, which I believe has been done in other parts of the country. I wonder what you think. Who could arrange the recruitment? Have you had any examples of where that has happened? Do you think that that is a model for potentially having a very targeted way of addressing the deserts issue?

Richard Miller: This is something that would be worth exploring. It sounds like it would be very interesting to develop a pilot as to what that might look like. There have been various different approaches in the past. There was a public defender service set up in the early 2000s. It was found that that was massively more expensive than delivering services through private practice. On the other hand, we have a network of law centres. They are set up on a charitable basis. The lawyers do not expect huge salaries; they just need enough to live on. They are a very effective



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model for delivering social welfare law services. A system increasing the grants available to the network to set up new services where none currently exist would potentially be a good way to address things.

This relates to another issue: alternative sources of funding. One area that has been looked at recently is the uncollected funds from collective actions and judgments made in the Competition Appeal Tribunal. Those funds are available for access-to-justice projects through the Access to Justice Foundation. They potentially could be a good source of seed funding for setting up a model like that. There are things there that would be well worth exploring further.

Rohini Jana: Can I jump in very briefly? I am aware that some MPs in the current Government have been trying to set up law centres in various spots in legal aid deserts around the country. The anecdotal evidence that I have heard from them has been how incredibly difficult it has been to staff them to comply with the various bureaucratic regulations and guidance with which you must comply to have a legal aid contract or to set up a law centre. One example that I can think of has gone down the pro bono route. They are delivering remote advice using pro bono clinics, and that is fantastic. It is brilliant that people living within a legal aid desert are being helped. As Mr Miller says, there is more need to explore this in various other forms.

Tony Vaughan: There is a power in section 2(2)(c) of LASPO to make arrangements to secure legal aid in areas where it is not being met. I was going to ask about remuneration for legally aided work.

Q40 **Pam Cox:** I have a very quick practical question about the university network. I know that the University of Essex, where I used to work, has a law centre. Do you know what proportion of universities with a law department have a law centre?

Kirsty Brimelow: I can look into it, I am sure. The University of Essex is one. We know Queen Mary University of London is another. There are a number. The issue is what sort of work they do and the supervision that is required. Yes, they are important, and they provide some access to people with legal issues.

Q41 **Pam Cox:** I was thinking of them as a national network, and they cover many of those areas.

Richard Miller: Yes, the vast majority of universities now have law clinics. They vary enormously in how they are set up. I know that at least one has a legal aid contract. There are others that are set up and only operate during term time and for very limited areas of law. There is quite a range of different approaches. Fundamentally, we have to remember that the purpose of those law clinics is to teach the students, and the fact that they give advice to the general public is a byproduct rather than their purpose.

Q42 **Pam Cox:** We might argue about that.



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Richard Miller: There is no doubt that they provide a valuable service. It is about the range of services they provide. Some operate only during the term times and do not manage to maintain services through holiday periods. Some are incredibly limited over the areas of law that they deal with. Most of them have some sort of service now, and it is something that has added to the overall network in the recent years.

Rohini Jana: It would be fantastic if that were part of some overarching strategy whereby there was some accountability and governance.

Q43 **Tony Vaughan:** Thank you. I want to ask about remuneration, with Ms Brimelow first. Barristers in criminal legal aid have had a 15% increase and solicitors have had a 24% increase since the criminal legal aid review. To what extent is that enough? Is it going to stabilise the position or not?

Kirsty Brimelow: The 15% increase, you are quite right, came in at the end of 2022, and was the result of the independent inquiry by Sir Christopher Bellamy, which in itself took a long time to report. By the time that came through to implementation, that recommendation from the report was already substantially overdue. It was always set down as a starting point as a minimum; that was emphasised. There was then a change of Government, and there has then been 18 months. We had the announcement of up to £34 million for advocates just before Christmas. That amount is clearly insufficient. It is even less when it is calculated by looking at the increase of the 15%, because other bits were added to it.

Now, there is work being done through CLAAB, which was set up through the deal with the CBA and the MOJ at the end of 2022, to try at least to get that £34 million out through the door. The issue here and the real sticking point that needs to be addressed is that it cannot impact only on cases that will come in in about another two years' time. It has to operate now, because we do not have the luxury of two years of barristers working at the current rates. We can see that in the crisis that is there. We need to address the delays and backlogs, and we need to get that money and that legal aid increase in now. That has been supported and recognised by not only the Bellamy report but also the CLAAB report. They are all independently coming to the same conclusion.

It is a disappointingly small amount. What else can you get meanwhile from alternative sources? There is a £550 million pledge to victims. The £550 million is looking at the justice system. The people who are giving voice to complainants, alleged victims, are the prosecutors in court. In order for that case to go forward, you also need a barrister defending in court. We do not see why some of that money could not be considered to go to the prosecution, in particular, who are needed to bring the case. This has been a mistake from the previous Government, in my view. It does not help people that they are given lots of support, which is necessary, if they then get to court and their case cannot go ahead because there are not the barristers to prosecute or defend it. We would like to see money come from that into there. The other alternative is



asset recovery. It might be that we go into more detail on this in another session. This is recovery of monies through the criminal justice system.

Q44 **Tony Vaughan:** Currently, where does that money go? Into the Home Office's coffers?

Kirsty Brimelow: Yes, the Home Office. It could be used specifically for legal aid. A large amount is recovered every day, up and down the country. If we could see even that coming in and being used immediately while this pledge of up to £34 million starts to come through the system, that would be at least some sticking plaster.

Q45 **Tony Vaughan:** That is useful. I want to ask also about housing and immigration. Now we have had recent increases, the first since 1996.

Kirsty Brimelow: Yes.

Tony Vaughan: Similarly, to what extent—this is to any of you—will those increases address those historical funding difficulties?

Rohini Jana: Can I jump in with a quick figure here? While the uplifts from 2025 in housing and immigration are incredibly welcome, it is worth noting that even the highest rate for complex litigation in these areas is still only about half of what an unqualified paralegal can charge a private client under the guideline hourly rate. We still have a long way to go if we are to make this work sustainable. It is also worth noting that there is a desperate need for uplifts to be made across civil legal aid and not just in housing and immigration. When these fees were last set, a pint of milk cost 25p, whereas it now costs about 99p where I live. The average house cost was under £60,000. Inflation has been absolutely exponential in this period of time. We are currently asking legal aid providers to pay 2026 office overheads and salaries, but they receive 1996 fees. It is simply impossible.

Q46 **Tony Vaughan:** Do you think that these increases will go anywhere near to preventing this attrition that we see in the system, where solicitors are spending all the time, as you referred to earlier, doing admin, essentially, that they are not paid for, but they have to do as part of a contract? Are we going to see this trend continue?

Richard Miller: There is a risk that we will. The increases are very welcome. If you look at the work we commissioned from Frontier Economics, the indication is that this will at least bring some of the housing practitioners above the level of breaking even, so it is progress. It will have some benefits and at least stem the outflow from this work. We come back again to the point that, unless firms have an assurance that the rates will be maintained in real terms in the longer term, it is really difficult to make the economic argument for staying within this market. That is the benchmark or bottom line. We need the assurance that rates will not get worse, and then let us see what we need to do to build up rates further to increase capacity rather than just stop it from continuing to shrink.



Q47 Tony Vaughan: In relation to areas that are not housing and immigration but education, welfare benefits and community care, which have not had the increase, how would you assess the position there as to their sustainability and whether people are going to stick in those sectors if they are not getting paid properly?

Rohini Jana: There are only 19 firms throughout England and Wales with a legal aid contract to deliver education services. That is insane. The Government have taken some amazing steps forward in terms of renters' rights, but if there are no housing providers out there prepared to undertake the work it will be an empty promise we make to the public.

Kirsty Brimelow: From the Bar Council's perspective, this is such a poorly paid area of work and there is acute need. Undoubtedly, this sort of need is what MPs will deal with. The Bar Council made its case for the review of civil legal aid in its RoCLA submission, and has not had a response. It recommends reintroducing a legal help scheme in welfare benefit cases, and restoring legal aid for housing disrepair cases. In immigration cases in particular, legal aid could be offered for pre-permission judicial review and for applications for leave to enter or remain based on individuals' Article 8 rights. It should also be made available in applications based on statelessness. There are some concrete and detailed recommendations. Again, we can send that through.

In conclusion, the only widening of scope since LASPO was in the Public Office (Accountability) Bill, and that was to make non-means-tested legal aid available at inquests. Of course, that is welcomed. Then there was the small £18 million increase in legal aid in housing and debt. These are the cases where we see litigants in person repeatedly, not only in the wrong jurisdiction—the High Court when they should be in other courts—but also in cases that are not progressing forward at all. Very tragically, that person is then out on the street again and other social issues follow.

Richard Miller: The only other point that I would make is in family. We have a Government that recently put forward their strategy to deal with violence against women and girls. Legal aid lawyers are a key part of protecting the victims of domestic abuse. Unless there is a significant increase for family legal aid lawyers, those lawyers are not going to be there to provide that protection.

Kirsty Brimelow: I underline that point. There was huge input from the Family Law Bar Association in the report that was released just before Christmas. We can circulate that. It makes clear the acute issue of family law barristers considering leaving or moving away from family law. We need these preventive injunctions in place to stop domestic violence. When I was a junior practitioner, it was almost bread and butter that we would run around to the county courts dealing with these, and now you just do not see them to the same extent, for a variety of reasons. It really is important if that goal of Government is to be at all addressed.

Tony Vaughan: Thank you.



Chair: Thank you. We have two more short topics to deal with. We will try to finish at 4.30 or shortly afterwards, if that is okay with the witnesses.

Q48 Warinder Juss: Back to me on the financial viability of firms. We have spoken a lot about litigants in person. You already commented on the effect that the current legal aid system has on the financial sustainability of firms and the loss-making work that firms have to do. I am really glad, Ms Brimelow, that you made the comment in answer to Sir Ashley's question that firms are driven by the justice of representing people. I experienced that a lot when I was in practice.

I want to talk specifically about the issue of fixed fees. I have had a couple of meetings with the Society of Clinical Injury Lawyers and other people whom I have come across. Often, fixed fees do not represent the actual time spent on cases that can be very complex. I remember when I was in practice that a lot of firms stopped doing personal injury work, especially the fast-track work, which resulted in more litigants in person. We already had a discussion about that. What is your view on what needs to be done with fixed fees and interim payments? I remember spending £10,000 just to issue court proceedings. The Society of Clinical Injury Lawyers told me that experts' fees have really rocketed. How do you represent these individuals who need help when they have to spend so much money that they must deal with themselves?

Richard Miller: This is a really challenging issue. There are parts of the legal aid system that run on fixed fees. We also have the issue of fixed recoverable costs for civil litigation, now up to £100,000. There is currently a stocktake and a call for evidence in relation to fixed recoverable costs for civil private cases. The evidence that we see there is that the costs are simply not set at the right level and that that is having a negative impact on access to justice. Previously, the position was that if you won the case you would recover the costs necessarily and reasonably incurred, and that seems to be a perfectly reasonable proposition. Now you get just a fixed sum, regardless of the amount of costs actually incurred. As a result, successful claimants lose a large chunk of the compensation that the court said they should have as a legitimate remedy for the wrong that has been done to them. They have to pay that in costs that have been incurred because the defendant defended the case wrongly, and they are losing out because of this fixed-costs mechanism. We have some real concerns about that, which we will bring out in this review that is going on at the moment.

On the legal aid side, the fixed cost element is yet another burden on top of the fact that the rates are low in the first place. It was always done on a swings and roundabouts basis, but post LASPO one real challenge is that LASPO took out a lot of the smaller, easier cases, so you were left with only the bigger and more complex cases but still getting the same fixed fee. That was an invisible cut to the rates that happened as a result of LASPO. We are now 15 years further on. There has never been any review of the costs. There has never been any analysis to say, "Well,



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actually, what is the work required in 2026 as opposed to what was required in 2005 or whenever the rates were set?" The whole landscape has changed. The whole way of doing business has changed, and we are still stuck with the same figures that were set 20 years ago. As you say, they do not reflect the costs required to do the work, so firms have a choice: they either lose costs on the work or they stop doing it, and more often than not they are stopping doing it now.

Kirsty Brimelow: This was identified as a particular issue not only in crime but also in family. The complexity has increased, but there has not been any fee alongside the extra work required to be done for the case to progress. We have referred to that. It is an issue. There is no way round it. If additional work is required, there has to be payment for it.

I want to throw up another stat which might be helpful. It is from the National Audit Office's report on the Government's management of legal aid, from 9 February 2024. It said that the MOJ has not increased fees for civil cases since 1996, and reduced fees by 10% between October 2011 and February 2012. In real terms, fees are now approximately half of what they were 28 years ago. You have that and then you have increased work demands because of increased complexity of cases.

Rohini Jana: Can I take a very quick moment—I will speed up the way that I am speaking—to discuss the escape fee trap that we are also in, which I think you alluded to? To get paid an hourly rate, a practitioner currently must do enough work to escape the fixed fee, which is usually by reaching three times the value of that fee, which is roughly £800 if the legal help fixed fee is £266. Anecdotally, our members are telling us that, if a lawyer spends 15 hours on a complex SEN case or a family case but the profit costs fall short of that £800 threshold, they are paid only the £266, so ultimately they are working for free. If you want to do the maths, that equates to roughly £17 per hour. That is something else that we need to consider: lowering the escape fee threshold to perhaps something a little bit more manageable than three times the original fixed fee.

Q49 **Warinder Juss:** I have a final question. Would your view be either to get rid of fixed costs or just increase the levels of the range on which fixed costs are payable? Mr Miller, as you rightly pointed out, cases that ought to be settled—and I have heard this from clinical negligence lawyers—are not settling because the defendant takes a particular view of wanting to fight it. How do we deal with that situation where that representation of the claimant has to continue but the other side does not settle when it ought to?

Richard Miller: At the moment, there is provision in there that says, if the behaviour of the defendant in that situation is unreasonable, there is some scope for additional costs being awarded. We do not have very clear evidence as to how that works in practice, but, anecdotally, I have heard that it is really difficult to persuade courts to order payments on that basis.



In terms of what would work on the legal aid front, it is very difficult because you always have a conflict between something that is fair in all circumstances and something that is not too burdensome or bureaucratic. Hourly rates are great in principle, but they are very bureaucratic to assess. The one that works best is the scheme in the magistrates court where if the costs are up to a certain limit you get one fixed fee, if they are up to a higher limit you get a higher fixed fee, and if they are above that you get the hourly rates. It is something like 85% on the lower fixed fee, 10% on the higher fixed fee, and 5% escape. There is budgetary control for Government, and the fees that the firm gets broadly reflect the work that they have had to do on the case. Out of all the various fee schemes, that seems to be the most acceptable on both sides.

Q50 Pam Cox: We will close by talking about cyber-attacks. What were the impacts of that recent cyber-attack on those who were recipients of legal aid services, many of whom were vulnerable? What lessons are being learned and applied?

Richard Miller: From our point of view, the starting point was we were surprised that the Legal Aid Agency did not seem to have an effective contingency plan ready to go. Having a cyber-attack is a very well-recognised risk for any public or commercial body these days. It seemed from our perspective that the Ministry of Justice had to build its contingency arrangements at the point that it took its systems offline. That meant that, for the next month or so, we were working on how we deal with payments to firms so that they do not go under immediately and how we deal with applications. The fact that there were not systems in place ready to go took us by surprise.

Having said that, at the point that the decision was taken to take the systems offline, Ministry of Justice officials worked incredibly hard. They engaged well with the professions to try to work through what was possible, what was going to work, what was most needed, to prioritise the most important elements first, and to get some sort of system operational as quickly as possible. I must pay tribute to the work that LAA staff did over that period. It was incredibly stressful for everyone, and they really worked hard to try to make sure that the system did not completely collapse. Difficult as it has been for everyone, a lot of hard work went into ensuring that things were able to continue.

For us, one of the biggest concerns is the sheer volume of additional work that firms have had to undertake in addition to all the stress on them. Our view is that firms need to be compensated properly for all the additional bureaucracy that they have had to undertake and will still have to undertake getting systems back up to proper running now that the systems are coming back online. So far, there has been no indication from the Government that they are looking at having a system for paying. A couple of thousand firms here have been impacted. Their own data has been leaked. They have had all this additional bureaucracy. Their clients' data has been leaked. It seems to us logical that there



should be one simple central system that says, "Right, for everyone who's been affected by this, we've got this system for compensation." It would be better for firms. It would be better for Government. We do not want 2,000 firms each bringing their own separate legal action against the Government for what happened here. It is absolute nonsense to do that. At the moment, we are just not seeing any indication that the Government are willing to look at setting up a system like that. We would certainly encourage them to do so.

Kirsty Brimelow: The position with the Bar is that barristers were not able to claim for civil family legal aid fees for more than six months after the cyber-attack. It is very difficult for self-employed people. The system is back online and the backlog of claims are being submitted and processed. I agree with everything that Richard Miller said about how well the LAA has worked with clerks and the Bar. A whole team has been set up. It is a huge amount of work, but the LAA has worked very well and hard with the Bar. It offered the contingency payments, as you probably know, to help with cashflow. This is where the barrister can apply for the interim payment, but it is based on an average calculation of previous billing. If somebody, for whatever reason, has not had that billing previously, there then have to be negotiations to get a figure, so it all takes lots of time. Some people have not wanted to get involved with contingency payments because of bad experiences with the LAA recouping previously, where they will suddenly claim recouping from a case some 20 years ago. That has in itself therefore caused financial hardship. Barristers have had no alternative but to get loans and other bridging financial arrangements.

In preparation for this session, I spoke to one of the clerks who is the representative from the IBC, working on this with the LAA and the Bar Council. She told me that the LAA is due to start recouping its contingency payments in February. That is not great timing because tax bills come at the end of January. We hope that there is continued flexibility from the LAA in terms of the financial hardship on barristers. The query, and something perhaps to take forward, is that we have had lots of concerns raised about how contingency payments are declared on tax returns, which are coming up at the end of January, and the VAT treatment of contingency payments. There has been advice issued by the Bar Council's taxation panel. At one point, we were told that HMRC would issue guidance this month about those issues on tax and VAT, but we have not seen anything yet.

Q51 **Pam Cox:** Can the public have confidence in the LAA and its cyber-security now?

Rohini Jana: Well, quite. Two million records dating back to 2007 were leaked. While steps have been taken forward—and I echo all the comments that have been made about how exceptionally hard the LAA worked—there still remain concerns around the infrastructure that we are



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operating within. Lessons need to be learnt and steps taken moving forward to ensure that this never happens again.

Richard Miller: The LAA's IT systems have been known for years to be fragile. This attack did not come as a surprise. For years there have been calls for major investment to get the system up to a suitable standard. What is happening at the moment is the system is being restored to where it was before the breach. It has not got us to the stage where it is a good, secure, modern system. That still needs to happen. I understand that is planned, but we could do with knowing a bit more about what that plan looks like.

Rohini Jana: I want to stress how difficult this has been for firms and providers. I already mentioned how much unpaid work they undertake during the course of ordinary work. We had a member tell us that the additional work in administration calls by manually doing absolutely everything consumed between 30 to 40 hours a week. That is one caseworker working full time, and this was a family law firm. That is any number of domestic abuse victims who are not being helped because that caseworker was dealing with the LAA's data breach as a full-time thing.

Chair: We are going to conclude matters there because the issue of public sector IT schemes is one we deal with almost every session. The LAA will have to get in the queue behind a number of others in the justice system as well.

I end by saying thank you very much to the witnesses. In the first hearing of this inquiry, you have managed, as we expected, to tell us a lot about what the current situation is with legal aid, so thank you very much for that. I will make one brief comment. Although we may well point out deficiencies in legal aid, we are looking at other areas as well. Some of them we mentioned today, but let us know if you have any further thoughts in relation to other ways in which we can help either address the imbalances in equality of arms or indeed allow people to get their day in court, or at least get their dispute resolved more quickly. That is the objective that we set out. I also thank members of the Committee today, particularly those who did not have a chance to ask everything that they wanted to ask. We had a great deal to get through. Thank you very much. I bring the session to an end.