



House of Commons
Justice Committee

The Future of Legal Aid: Government Response to the Committee's Third Report

Fourth Special Report of Session
2021–22

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are Chloë Cockett (Senior Specialist), Gina Degtyareva (Committee Media Officer), Hannah Finer (Committee Operations Manager), Anna Kennedy O'Brien (Committee Specialist), Su Panchanathan (Committee Operations Officer), George Perry (Committee Media Officer), Jack Simson Caird (Assistant Counsel), Ben Street (Second Clerk), Holly Tremain (Committee Specialist), and David Weir (Clerk).

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You can follow the Committee on Twitter using [@CommonsJustice](https://twitter.com/CommonsJustice).

Fourth Special Report

The Justice Committee published its Third Report of Session 2021–22, [*The Future of Legal Aid*](#) (HC 70) on 27 July 2021. The Government's Response was received on 2 November 2021 and is appended below.

Appendix: Government Response

Letter from the Deputy Prime Minister, Lord Chancellor & Secretary of State for Justice

I am writing in response to the Committee's report on the Future of the Legal Aid. I am very grateful to the Committee for conducting an inquiry into this important issue. We have taken time to consider the conclusions and recommendations set out in the report and have included our response in a Memorandum attached to this letter.

The Government is committed to ensuring that we create and maintain a justice system which supports access to justice and as Lord Wolfson said when he gave evidence to the Committee in March, we need a sufficient number of people in the profession in order to enable people to have access to that advice. We have listened to the concerns raised by some criminal defence practitioners, that a career in legal aid is becoming increasingly less attractive, by launching the Criminal Legal Aid Independent Review (CLAIR). The Review is considering, amongst other things, whether the current rates of pay for undertaking criminal legal aid work fairly reflect the work undertaken and whether a mechanism for reviewing the legal aid fee schemes might help to encourage new providers to enter the market and incentivise existing providers to continuously improve the quality of their services. We remain on track to publish Sir Christopher Bellamy's report alongside the Government's response, before the end of 2021, which will also address the Committee's recommendations relating to criminal legal aid.

Over the past year, we have also been considering the issue of the sustainability of the Civil Legal Aid system. Whilst we have not launched a formal review of civil legal aid, we have been considering the system carefully, building on the work done by the Post-Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. We are considering what could be done in the short term to improve the sustainability of the system but not losing sight of ensuring that the civil legal aid system is as effective and sustainable as possible in the long term. As part of this we are already focusing on improving our evidence base on the most effective forms of support, including developing an early legal advice pilot which will launch next year to test the impact of early intervention in social welfare issues. The evidence gathered from this pilot will be used to further consideration what the future civil legal aid system should look like.

Alongside this, we are nearing completion of our review of the Legal Aid Means Test. As you are aware, the Means Test Review is assessing the effectiveness with which the means test ensures access to justice, with a particular focus on those who are vulnerable, including victims of domestic abuse. The review is scheduled for publication in Autumn 2021, with an accompanying consultation, after the Spending Review has been announced.

We will address those points raised in the report which relate to the Legal Aid Means Test following our consultation on the Means Test Review. As the Committee has noted, we have already made some changes to the civil legal aid means test ahead of the wider review.

Finally, we know that the Covid-19 pandemic has created a range of challenges for legal professionals, many of whom have experienced financial difficulties as a result of fewer cases being heard in the courts. The Government has provided significant financial support to providers, including by introducing several measures to enable greater cash flow. The Legal Aid Agency has already made some changes permanent which originated during the pandemic and continues to keep under review others which are still in place.

I can assure the Committee that my department will continue to engage with you and keep you up to date on the work to deliver our longer-term reform ambitions for legal aid.

Yours ever,

RT HON DOMINIC RAAB MP

Government Response

Introduction

We have provided our responses to the Committee's recommendations in the order in which they appear in the 'Conclusions and Recommendations' section of the report.

Criminal Legal Aid

Recommendation 1: Reform of criminal legal aid must prioritise a whole justice system approach, to ensure that there are incentives for everyone to work towards the fair and timely resolution of criminal cases.

The Criminal Legal Aid Independent Review (CLAIR) is looking at the criminal legal aid system in its entirety. The Terms of Reference for the review can be found on [gov.uk](https://www.gov.uk). The Government has committed to respond to the Review's final report before the end of 2021. Alongside this, we have developed the Criminal Justice Action Plan with partners from across the CJS to drive system recovery as we rebuild and restore from the impact of the pandemic. This Action Plan spans the system from police to the courts and is centred around three agreed priorities: improving timeliness, increasing victim engagement and reducing the number of outstanding cases. These priorities provide a shared focus across the system, creating a whole criminal justice system approach to recovery. Further, we have expanded and re-invigorated the cross-criminal justice system governance structure to provide the right framework and create the right environment for us to deliver our agenda on recovery and reform. This governance framework joins up the system at Ministerial and official level and oversees the implementation of the Criminal Justice Action Plan.

Recommendation 2: The changes made as part of the Criminal Legal Aid Review are positive and show that the Government recognises the need to make improvements to the criminal legal aid framework. It is particularly welcome that the Government has acted on pre-charge engagement. However, much more needs to be done to make criminal legal aid sustainable.

We agree that the sustainability of the legal profession is fundamental to a well-functioning justice system. Sir Christopher Bellamy QC is considering the resilience of the criminal legal aid market as part of his Independent Review into Criminal Legal Aid. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 3: Without significant reform there is a real chance that there will be a shortage of qualified criminal legal aid lawyers to fulfil the crucial role of defending suspects and defendants. This risks a shift in the balance between prosecution and defence that could compromise the fairness of the criminal justice system.

Sir Christopher Bellamy QC is considering the resilience of the criminal legal aid market as part of his Independent Review into Criminal Legal Aid, including market composition and the provider pipeline. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 4: There appears to be a growing imbalance between the ability of criminal defence firms to recruit and retain staff and that of the Crown Prosecution Service. It is fundamental to our adversarial justice system that criminal defence services have sufficient resources to provide high-quality representation to suspects and defendants. We recommend that the Government consider linking legal aid fees to the rates of pay of the Crown Prosecution Service.

Sir Christopher Bellamy QC is considering the resilience of the criminal legal aid market as part of his Independent Review into Criminal Legal Aid, including profitability (and hourly rates of pay in comparison to the Crown Prosecution Service reward package) and the provider pipeline. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 5: The lack of any increase to criminal legal aid fees for solicitors over the past 20 years needs to be addressed. Sir Christopher Bellamy's current review, commissioned by the Government, gives an opportunity to do this. Thereafter, fees and rates should be regularly reviewed in line with inflation, otherwise the gap will build up over time and become harder to address.

In September 2020, we injected up to £51m per annum into the criminal legal aid system, through payments for reviewing unused material and sending cases to the Crown Court. From this, litigators are estimated to have received additional funding of £17m - £24m per annum. In 2019–20, there were 1,220 solicitor firms in receipt of criminal legal aid fee income. In addition, the Criminal Legal Aid Independent Review's Terms of Reference include a section on 'fee review' considering whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 6: The criminal justice system will be stronger if able and experienced advocates at the criminal bar are able to do publicly funded legal aid work. The gap between private and public rates has grown substantially in the past decade, and while a significant gap is to be expected, we agree with the Criminal Bar Association's interim submission to the Independent Review of Criminal Legal Aid that there needs

to be a connection between the two. Further, in assessing the fees paid to advocates, it is important to remember that the total fees do not translate directly to earnings, as barristers have to pay considerable overheads, expenses and chambers fees out of the gross fee. The Government should take this into account when considering how to reform the criminal legal aid system.

In September 2020, we injected up to £51m per annum into the criminal legal aid system, through payments for reviewing unused material and through increased funding for cracked trials and paper heavy cases. In addition, the Criminal Legal Aid Independent Review's Terms of Reference include a section on 'fee review' considering whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 7: There are serious problems with the current fee schemes for criminal legal aid. The fees and rates do not reflect the work required. The schemes should be reformed to ensure that they offer a fair rate for the work required and are subject to regular review.

In September 2020, we injected up to £51m per annum into the criminal legal aid system, through payments for reviewing unused material and sending cases to the Crown Court. From this, litigators are estimated to have received additional funding of £17m - £24m per annum. In 2019–20, there were 1,220 solicitor firms in receipt of criminal legal aid fee income. In addition, the Criminal Legal Aid Independent Review's Terms of Reference include a section on 'fee review' considering whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 8: The justice system needs talented lawyers from all backgrounds to choose to practise criminal law and for the professions to be able to retain them. In 2018, our predecessor Committee stated "that current difficulties in recruitment to the Criminal Bar could have a negative impact on future recruitment to, and diversity within, the judiciary—in particular for judicial office holders in the criminal courts". This inquiry's evidence has reaffirmed those concerns.

Sir Christopher Bellamy QC is considering diversity in the context of criminal legal aid as part of his Independent Review, including provider diversity and what the barriers to entry, retention and career advancement within the Criminal Legal Aid profession are for individuals with protected characteristics or from lower socio-economic backgrounds or for individuals operating within particular parts of England and Wales. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 9: The predominance of inadequate fixed fees in the current framework is problematic. The structure of the fees does not reflect the complexity of the work required, nor does it incentivise firms to take on the most difficult cases at an

early stage. The Government should reform the fee structure to prioritise quality over quantity and to allow criminal defence lawyers to spend more time on the most difficult cases at the earliest possible stage. There is a risk to the fairness of the criminal justice system if lawyers are not willing to take on the most complex cases because of the low rates of pay. There are also clear benefits for the operation of the criminal justice system if more work can be done at an early stage to make progress on a case.

The Criminal Legal Aid Independent Review's Terms of Reference include a section on 'fee review' which is considering whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services, including whether criminal legal aid is appropriately funded. We will address this issue in our response to the review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 10: The Committee's inquiry on court capacity has focused on the Crown Court where the delays are the most acute. In that context, it is imperative that the criminal legal aid system should be structured to facilitate resolution of cases at the earliest possible stage in the process.

The Criminal Legal Aid Independent Review is considering whether the structure of the Criminal Legal Aid System incentivises or enables modern and proportionate methods of service delivery. The review will consider whether changes to when and how advice is provided could increase efficiency in the CJS. It will explore whether contractual requirements could be adjusted to enable providers to explore new methods of providing advice and representation. The review will also consider whether the adoption of alternative provider business models would promote efficiency and whether the efficiency of providers' services could be improved or complemented by proportionate adjustments to CJS processes and procedures (and if so, what these changes might be). We will address this issue in our response to the review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 11: The criminal legal aid system should be restructured so that it enables legal aid lawyers to provide effective representation at every stage of the process, works for complex cases and sustains providers in all areas of England and Wales. The Government should reduce the role of fixed fees within the legal aid system to ensure that high quality work at every stage of proceedings and on complex cases is fairly remunerated.

The accelerated measures brought significant new funding to criminal legal aid, including to solicitors, through payments for reviewing unused material and sending cases to the Crown Court. In addition, the Criminal Legal Aid Independent Review's Terms of Reference include a section on 'fee review' considering whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 12: The current criminal legal aid system does not provide enough incentives for legal representatives to take early action to progress cases through the system as quickly as possible. The legal aid fee structure should incentivise early engagement between defence lawyers and the police and the CPS. The current system does not do enough to recompense lawyers for taking on complex cases at the police station and at the magistrates' court. Investing more in early engagement will lead to savings to the public purse, as cases would be resolved at an earlier stage, which could free up capacity across the criminal justice system.

Sir Christopher Bellamy QC is considering whether changes to when and how advice is provided could increase efficiency including whether the structure of the Criminal Legal Aid System incentivises or enables modern and proportionate methods of service delivery. The review will consider whether changes to when and how advice is provided could increase efficiency in the CJS. It will explore whether contractual requirements could be adjusted to enable providers to explore new methods of providing advice and representation. The review will also consider whether the adoption of alternative provider business models would promote efficiency. We will address these issues in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 13: The Government needs to ensure that the legal aid framework is able to respond and adapt to changes in volume and practice over time in the criminal justice system.

Sir Christopher Bellamy QC is considering the resilience of the criminal legal aid market as part of his Independent Review into Criminal Legal Aid, including whether a mechanism to review fees might be beneficial. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 14: Our 2019–21 Report on the effect of Covid-19 on the legal professions discussed measures taken to provide additional income during the early stages of the pandemic. The impact of Covid-19 means, however, that the need to take action to improve the criminal legal aid framework is now even more urgent than it was when the Government set up the Criminal Legal Aid Review in 2018.

The Criminal Legal Aid Independent Review (CLAIR) is a ministerial priority and the Government has committed to responding to Sir Christopher's review by the end of 2021. As set out above, the accelerated measures brought significant new funding to criminal legal aid, including payments for paper heavy cases, reviewing unused material, sending cases to the Crown Court, and increased payments for cracked trials.

The Legal Aid Means Test

Recommendation 15: The Government should evaluate whether the money saved by the means test is justified when weighed against its impact on the fairness of criminal justice system. If the means tests for the magistrates' court and the Crown Court are to remain then the current eligibility thresholds should be addressed and thereafter automatically uprated every year in line with inflation.

The legal aid means test is designed to ensure that legal aid is targeted at those most in need. We are aware that it has been some years since the eligibility thresholds have been

updated, and that is why, in February 2019, the Government launched the Means Test Review. The review is assessing the effectiveness with which the means test ensures access to justice. It is considering the income and capital thresholds for civil and criminal legal aid, as well as other areas including passporting provisions for people receiving certain benefits. We intend to publish the review alongside a public consultation shortly.

Recommendation 16: The Government's response to our report on private prosecutions concluded that the rules should be changed to level down what private prosecutors can recover from central funds. Our view is that this is the wrong approach. The right approach would be to make the system fairer by levelling up and removing the cap on what reasonable costs acquitted defendants may recover from central funds.

As part of the Means Test Review, we are considering the income thresholds for legal representation at the Crown Court, and the associated issue of the costs that acquitted defendants may recover from central funds.

Youth suspects and legal aid

Recommendation 17: We recommend that the Government implement the recommendations of the Taylor Review of Youth Justice: to review the fee structure of cases heard in the youth courts in order to raise their status and improve the quality of legal representation for children and to introduce a presumption that children should receive free legal representation at the police station.

The Criminal Legal Aid Independent Review is considering several issues relating to youth justice, including how to ensure the legal aid fee schemes in the Police Station and Youth Court incentivise the provision of high-quality advice and representation.

We know that the current 'opt-in' system of legal advice has a variable uptake, especially from these vulnerable cohorts, leading to lower access to out of court disposals (a diversion from a trial in court), increasing likelihood of remand, and potentially inappropriate decisions by the individual (such as when to admit guilt) all of which have the potential to drive disproportionality. We are currently considering trialling a system of legal advice in police custody for young and vulnerable individuals that presumes the uptake of this advice as opposed to necessitating they 'opt-in' to this service. The objective is to test whether the presumption of provision of legal advice to those in police custody improves outcomes in relation to better protection of vulnerable individuals, take up of Out of Court Disposals (that may rely on an admission of guilt) and bail decisions and other decisions taken following arrest in the police station setting.

Technology and access to justice

Recommendation 18: The Government should consider how technology can be used to increase the accessibility of legal advice to suspects and defendants. The Government should also consider developing a scheme to enable criminal legal aid providers to upgrade their digital capacity.

Sir Christopher Bellamy QC is considering the efficiency and transparency of the criminal legal aid market as part of his Independent Review into Criminal Legal Aid, including looking at how legal aid can be made responsive to user needs both now and in the future

and administrative burdens for providers. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Recommendation 19: Successive governments have prioritised efficiency and costs over the quality of the criminal justice system. The Committee's inquiry into Court Capacity has highlighted the difficult situation facing the courts at the start of the pandemic. Unless there is significant change to criminal legal aid, there is a real risk that the balance between defence and prosecution, which is at the heart of our adversarial justice system, will be unfairly tilted in favour of the prosecution. The fairness of criminal justice system depends on a criminal legal aid system that is properly funded and that is structured to enable lawyers to provide high-quality work on the most complex cases at every stage of the process. The Government's response to the independent review of criminal legal aid must ensure that criminal lawyers are paid for all the work they do to represent their clients and that fees and rates are regularly reviewed so that the profession can remain sustainable for the long-term.

As outlined above, Sir Christopher Bellamy QC is considering the resilience of the criminal legal aid market as part of his Independent Review into Criminal Legal Aid, including profitability (and hourly rates of pay in comparison to the Crown Prosecution Service reward package) and the provider pipeline. The Criminal Legal Aid Independent Review's Terms of Reference include a section on 'fee review' which is considering whether a mechanism to review fees might ensure they are flexible, can adapt to changing market conditions, encourage new providers to enter the market and incentivise providers to continuously improve the quality of their services. We will address this issue in our response to his review and have committed to responding to the Review's final report before the end of 2021.

Civil Legal Aid

Recommendation 20: It is frustrating, and yet unsurprising, that many of the concerns raised over the operation of the civil legal aid system by our predecessor Committee in 2015, and by Government's post-implementation review in 2019, have been highlighted in evidence to this inquiry on the future of legal aid in 2021.

We recognise that several of the issues highlighted in the evidence provided during the inquiry are similar to those previously raised by the Committee or during the Post-Implementation Review of LASPO. During the Post-Implementation Review of LASPO we committed to addressing a number of these issues. In some cases, we have already delivered policy changes and in others we remain committed to progressing work to improve the system, albeit delivery has been delayed due to the need to reprioritise internally due to the immediate impact of the Covid-19 pandemic. This includes work to improve the exceptional case funding scheme, a pilot to test the impact of early legal advice in social welfare law, and the investment of an additional £3m to support litigants in person.

Early advice and scope

Recommendation 21: The Government should take a whole justice system approach to the reform of the civil legal aid framework. The provision of early advice can help to make the courts work more effectively.

Our existing work on the sustainability of the civil legal aid system is considering civil legal aid as part of a much wider system, not just within the justice system but across public services more widely, recognising that legal advice can have an impact well before an individual reaches court. We have already committed to piloting early legal advice in social welfare law to test the impact of providing this advice on housing outcomes, recognising that legal aid forms part of a wider system, and the evidence gathered from this pilot will form part of our wider consideration on what the future civil legal aid system should look like.

Social welfare law

Recommendation 22: The Government should consider whether the model of the possession duty scheme should be used in other areas of the civil justice system where there are significant numbers of litigants in person. Non-means tested advice at court on the day of hearing could provide an economical way of offering some legal support to vulnerable litigants. We commend the Government and the Legal Aid Agency on their work on the duty scheme but ask that they learn the lesson that schemes which are “assertive and flexible”, as Simon Mullings described the possession duty scheme, are what is needed.

The Government agrees that the Housing Possession Court Duty Scheme (HPCDS) provides a very effective service for ensuring individuals are properly supported at court when they face the loss of their home. We are currently considering how to improve the sustainability of the HPCDS and ensuring this important service remains, including considering how it can be adapted to divert cases away from court where possible and suitable to do so, and we will be publishing a consultation on the future of the HPCDS in due course. As part of our work on the sustainability of the civil legal aid market we are considering the optimum model for the delivery of civil legal aid, which will include considering the issue set out in this recommendation. More widely, we agree that we need to find ways to support litigants in person, and both legal aid and legal support have a role to play in that. We have already increased our total funding for services supporting litigants in person to £3 million a year for the next two years, from 2020 to 2022. This new funding is being delivered through the creation of the Legal Support for Litigants in Person (LSLIP) Grant of £1.55 million per year.

Family law

Recommendation 23: The Committee welcomes the introduction of the Family Mediation Voucher Scheme. It is a positive step and recognises that more needs to be done to help separating parents. We believe that if early legal advice was available alongside mediation, this would result in an increase in the numbers using mediation successfully.

Since the launch of the Family Mediation Scheme on 26 March 2021, the Family Mediation Council on behalf of the Ministry of Justice has tracked weekly up take of the vouchers and are continuing to collect data based on the outcomes of sessions. The early data we have regarding outcomes, shows the scheme has been positively received and is achieving its purpose of assisting families to mediate their issues. We will continue to monitor the take up of the scheme and look more closely at the data collection we record in order to help

shape future initiatives in this space. Beyond this, our ongoing work on the sustainability of the civil legal aid market is considering the scope of civil legal aid, in particular for early legal help.

The future of early advice

Recommendation 24: We suggest that the civil legal aid system needs an updated version of the Green Form scheme, which was introduced in 1973, that would allow individuals to understand their rights and be directed to the services that are most appropriate for their situation. One suggestion we have received is that the Government could develop and pilot an ambitious and economically viable early advice scheme, that enables individuals to access timely legal and expert advice. Rather than being constrained by issues of scope, such a scheme should be strategically targeted at those who would most benefit from early advice.

We are developing an early legal advice pilot, which was a commitment in the Legal Support Action Plan. The pilot will test the impact of early legal advice in social welfare law (specifically focused on housing, debt and welfare benefit issues) on resolving people's problems earlier, and particularly the impact this may have on longer-term housing problems. The pilot will target this advice at a pool of people identified as being in need, for example individuals who have fallen into a certain type of arrears. We will then test the impact of this advice against a control group to attempt to quantify the impact of intervening earlier. We will announce further details of the pilot in due course.

Litigants in person

Recommendation 25: The weight of evidence, however, is that inaction on the rising number of litigants in person is not an option. Many of the policy responses to the issue involve increasing the resources of the courts or other agencies involved in the system. With the impact of the pandemic likely to lead to greater number of litigants in person in the family courts and in tribunals, we urge the Government to consider providing more accessible and effective forms of support.

In February 2019, as part of our Legal Support Action Plan, we announced we would increase our total funding for services supporting litigants in person to £3 million a year from 2020 to 2022. This new funding is being delivered through the creation of the Legal Support for Litigants in Person (LSLIP) Grant of £1.55 million per year. The grant is now fully underway, funding 11 projects across more than 50 organisations at local, regional and national levels to help people to identify issues as early as possible, prevent them from escalating, and to support people where they do need to attend court to understand legal processes and their rights within. Since 2014–15, we have also provided over £9 million in funding through the Litigants in Person Support Strategy (LIPSS), which works with four national partners to provide support to those representing themselves in court. Additionally, £2 million has been invested by the MoJ in the Community Justice Fund (CJF), which supports not-for-profit organisations in England and Wales providing legal advice to those facing legal issues such as loss of jobs, being caught in rent arrears, or built-up debt as a result of Covid-19. This investment follows the £5.4 million government grant for not-for-profit advice providers the MoJ delivered last year.

Data

Recommendation 26: We continue to be disappointed with the Ministry of Justice's approach to gathering data on access to justice. From the evidence we heard, the data they hold may not adequately reflect the impact of litigants in person on court time and throughput. We remain concerned that the inability to produce high-quality data on the impact of legal advice on access to justice means that the chances of the Treasury granting additional funding for legal advice and representation are slim.

One of the MoJ's key priorities to make best use of available data to inform evidence-based policy making. It is a key priority for the Justice Secretary. The MoJ Permanent Secretary wrote to the Committee in March 2021 setting out that the MoJ is committed to making best use of available data, but it is not without challenge. Much of the Ministry's data is held in legacy IT systems, particularly in our operations. This is often difficult to extract and join up. However, despite these challenges, we are making progress. MoJ and HMCTS analysts already have analytically well-developed models for forecasting demand across all jurisdictions, informed by intelligence from other Government departments and historical trends. To respond to the degree of pace of change facing the system, we are augmenting short and medium-term planning by developing new tools to support existing models. We are also investing to increase the capacity of our analytical function, and to change the mix of capabilities we have at our disposal.

Specifically, in relation to the impact of legal advice, next year we are launching a pilot to test the impact of early legal advice in social welfare law. This project will embed experimental evaluation from the outset and will significantly improve our understanding of the impact of these services.

The Legal Support Action Plan

Recommendation 27: We welcome steps to support litigants in person. We encourage the Government to consider whether the scale of these projects and grants should be increased.

In February 2019, as part of our Legal Support Action Plan, we announced we would increase our total funding for services supporting litigants in person to £3 million a year from 2020 to 2022. This new funding is being delivered through the creation of the Legal Support for Litigants in Person (LSLIP) Grant of £1.55 million per year. The grant is now fully underway, funding 11 projects across more than 50 organisations at local, regional and national levels to help people to identify issues as early as possible, prevent them from escalating, and to support people where they do need to attend court to understand legal processes and their rights within. Since 2014–15, we have also provided over £9 million in funding through the Litigants in Person Support Strategy (LIPSS), which works with four national partners to provide support to those representing themselves in court. Additionally, £2 million has been invested by the MoJ in the Community Justice Fund (CJF), which supports not-for-profit organisations in England and Wales providing legal advice to those facing legal issues such as loss of jobs, being caught in rent arrears, or built-up debt as a result of Covid-19. This investment follows the £5.4 million government grant for not-for-profit advice providers the MoJ delivered last year.

Recommendation 28: We recognise that the Government is making progress in improving legal support and information for litigants in person, but we caution the Government that such measures should not be seen as an alternative to tailored legal advice. We are aware that in areas such as benefits, non-legally qualified specialist advisors can provide appropriate assistance. However, as long as our system is characterised by complex legal frameworks and an adversarial justice system, the availability of individualised legal advice and support will remain necessary.

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The Means Test

Recommendation 29: We welcome the decision to remove the £100,000 cap. However, we regret that it was ever necessary for a victim of domestic violence to have to litigate to obtain legal aid because of the Government's failure to ensure that the means test is regularly updated.

We are aware that it has been some years since different elements of the means test have been updated, which is why the Government launched the Means Test Review. The government is clear that victims of domestic abuse must have access to the help that they need, including access to legal aid, and the review is specifically considering how the means test applies to victims of domestic abuse.

Recommendation 30: We welcome the Government's decision to review the means test for both civil and criminal legal aid. There is a strong consensus among witnesses that any revised means test for civil legal aid should be simpler, for example by using passporting, should be set at an objectively defined poverty line and should be regularly updated. The vast majority of taxpayers are not eligible for civil legal aid, and for those that are, it is often difficult to access.

The Means Test Review is considering the full range of means-testing criteria, including income and capital thresholds and passporting provisions for people receiving certain benefits, and will look at whether capital passporting for civil legal aid applicants should be reintroduced. This review is looking at proposals that will ensure access to justice, especially for those on low incomes.

Exceptional Case Funding

Recommendation 31: The Exceptional Case Funding system should be reformed.

Following the post-implementation review of LASPO in 2019, we committed to review the application process for Exceptional Case Funding, and this work is currently ongoing within the Ministry of Justice. This includes improving signposting and communications, customer service, and review of application forms. As part of this, and as per the recommendation in the Legal Support Action Plan (2019), we committed to simplifying the guidance for Exceptional Case Funding and are in the process of developing easy read guidance for ECF that prioritises user need to support understanding of the process. This guidance will be published by the end of the year.

Recommendation 32: We recognise the strength of Richard Miller's suggestion that judges should be empowered to make a direction that an individual needs representation and that it should be binding on the Legal Aid Agency to provide exceptional case funding in that case. Such an approach could increase access to justice for the most vulnerable litigants and improve the efficiency and effectiveness of court proceedings.

The ECF scheme remains a vital safety net to ensure legal aid is available where there is a risk of a breach of an individual's rights under the ECHR. We are already working to make changes, including bringing forward improved guidance, to ensure the scheme works as effectively as possible for applicants. The LAA play a vital and independent role in taking ECF decisions completely free from outside influence and we do not believe that this position should change.

Sustainability

Recommendation 33: Civil legal aid, like criminal legal aid, needs the Government to take decisive action to change the approach set by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 at the start of the last decade. Without such a step, the sector will continue to struggle to attract new recruits.

We are already considering the sustainability of the civil legal aid system and this includes consideration of what the future civil legal aid system should look like and how it should be structured.

Recruitment and retention

Recommendation 34: The Government should collect and publish more detailed data on the providers of civil legal aid, in particular it should capture how much publicly funded work each provider is doing each year.

As part of our work on the sustainability of the civil legal aid market, we are working on how we can improve our data collection on the characteristics of those that provide civil legal aid.

Advice deserts

Recommendation 35: Sustainability issues for civil legal aid providers are sufficiently serious to justify a complete overhaul of the system. A number of witnesses have highlighted that a combination of number of fundamental problems rather than one

or two specific issues contribute to the unsustainability of civil legal aid. Furthermore, this lack of sustainability is having a knock-on effect on the ability of those entitled to legal aid to access lawyers to provide advice and representation. We welcome the fact that the Government is undertaking a review to look at these issues in the round. That said, the success of that review will depend on whether it is able to put forward the radical solutions needed to make civil legal aid sustainable again. We received evidence to suggest that an internal review may not be adequate to that task. If that proves to be so, an independent review may be required, along the lines of the Independent Criminal Legal Aid Review, to acquire the evidence base needed for far-reaching changes.

We agree that the sustainability of civil legal aid providers is an important issue and are continuing to consider the best approach internally. We continue to engage with stakeholders on this issue and will engage with them in due course on next steps.

Recommendation 36: The basis for the radical change required in civil legal aid requires the Government to establish the level of need for civil legal aid services in England and Wales. Once that is established, the Government needs to ensure that suppliers of legal aid services have the capacity to meet that need. We agree with a number of witnesses that the current model of predominantly funding services by funding individual cases, often via fixed fees, will not enable providers to meet the need or demand for legal aid services. As Richard Miller told us “it is a bit strange that we have a system where the Legal Aid Agency makes decisions on each individual case, leading to extensive bureaucracy, which of course has a cost in itself”. Instead, a more flexible and proactive approach is required. The Government should fund more training opportunities for legal aid lawyers to ensure that those willing to pursue a career in publicly funded work are able to. The Government should provide more direct grants to organisations who can be relied upon to provide a high-quality and economical viable service. The Government should set up and run more duty schemes to help the vulnerable litigants within the justice system who have not been able to secure the services of a lawyer. The Government should ensure that fees for publicly funded work are regularly uprated in line with inflation.

We are already considering the sustainability of the civil legal aid market and how best to support the legal aid workforce. This includes consideration of funded posts within legal aid providers including the funding of training contracts. Alongside this, the LAA continues to invest in making improvements to digital services and processes to enable quick and accurate payment of bills, and assessment of eligibility in line with Legal Aid Regulations. The LAA is currently developing an online tool called Apply, which aims to significantly improve the civil application process for providers.

Recommendation 37: However, it is not a question of simply raising fees, but rather making better use of the resources available. We believe that the best way of ensuring value of money is to focus on expanding the capacity of those providers who are able to offer a high-quality service to the public at a relatively low cost when compared to the private sector. By doing this, we can reduce backlogs and help people solve legal problems more quickly. In certain areas of civil law, in particular immigration, community care and housing, we are concerned that the impact of Covid-19 will lead to a growing need for legal aid work, but that there will not be sufficient providers able to help. In those areas, we recognise that unless the civil legal aid review produces very speedy results, it is likely that individuals will be prevented from pursuing meritorious claims. The

Lord Chancellor should consider using his powers under section 2 of LASPO to make direct grants to organisations to fulfil the statutory duty to ensure that legal aid is made available.

We are already considering the sustainability of the civil legal aid market internally. As part of this work, we are considering whether different funding models might be appropriate in some instances.

Technology

Recommendation 38: The Government should support legal aid providers to upgrade their digital infrastructures. This should include helping smaller providers and Not-for-Profits procure the necessary hardware and case management software that could help them expand their capacity. The Government should also establish an Online Platform for Legal Advice, as suggested by JUSTICE, that is given prominence by HMCTS online that directs people to advice provided by legal aid providers.

As part of our commitment in the Legal Support Action Plan to better coordinate and signpost people to legal support, we have developed an online (guided pathway) signposting pilot intervention that provides people with support and signposting for housing disrepair problems. Through this pilot we hope to build up an evidence base of what works to help inform future policy decisions. The Ministry of Justice has collaborated with the Department for Levelling Up, Housing and Communities (DLUC) to develop this online intervention, and third sector advice organisations to validate it through feedback. User testing and engagement with the legal advice sector has ensured that users remain at the heart of its design. That is why the online intervention does more than signposting, it also offers tailored guidance and information about an individual's rights and responsibilities, with the aim that users will be able to 'self-serve' to resolve their issues before they escalate. The housing disrepair tool is accessible via the 'How to Rent' guidance on the DLUC's GOV.UK page: <https://www.gov.uk/government/publications/how-to-rent>, entitled 'Check how to get repairs done in your rented home'. We will continue to explore the role technology can play in helping people identify and resolve their legal issues at the earliest possible opportunity.

The Legal Aid Agency

The Legal Aid Agency's response to the Covid-19 pandemic

Recommendation 39: We commend the Legal Aid Agency for its work supporting legal aid providers since the start of the pandemic. The approach taken by the Agency and its staff shows that it can be flexible and proactive if the circumstances allow. We recommend that the Agency continues with this approach in the future. We would also suggest that the Agency considers whether any of the changes made to deal with the pandemic should be made permanent.

We are pleased that the Committee has recognised the efforts made by the Legal Aid Agency (LAA) since the start of the pandemic to support legal aid providers. The LAA implemented over 40 contingency measures, in line with the Agency's legal powers; emerging financial support directed by HMT; guidance from PHE; and contract flexibilities. The LAA continues to maintain an open and supportive dialogue with providers, has already made permanent some changes which originated during the pandemic, and continues

to keep under review those contingencies which are still active. Alongside the regular engagement between contract managers and providers, at the height of the pandemic the LAA proactively contacted over 2,000 firms directly to discuss their financial concerns. This enabled the LAA and the Ministry of Justice to better understand the impacts of the pandemic on legal aid firms, and to ensure that available support was being provided effectively. The LAA continues to look for opportunities to make its processes and systems easier and increasingly user-centred across contract management and casework teams.

The Legal Aid Agency's relationship with legal aid providers

Recommendation 40: We welcome the Legal Aid Agency's work to respond to legal aid providers concerns in relation to the "culture of refusal". We also recognise their commitment to ensure that taxpayers' money is managed properly. We acknowledge that the staff and leadership at the Legal Aid Agency have limited scope to alter the fundamental dynamics that determine their role within the broader legal aid system. Nevertheless, we believe that the evidence submitted indicates that the Government and the Ministry of Justice need to reevaluate the Legal Aid Agency's priorities. By asking the Agency to prioritise the "error rate" over other considerations, particularly access to justice and the sustainability of providers, the Government risks missing the wood for the trees. The Government's work on the sustainability of both criminal and civil legal aid should consider how to empower the Legal Aid Agency to take a more flexible and proactive approach to funding legal aid. The Government should ensure that providers are not required to conduct disproportionate amounts of unpaid work to apply for funding.

The LAA's strategy puts users of their services first, whilst ensuring that public resources are managed appropriately, in line with the principles of Managing Public Money. The LAA aims to make decisions quickly and in line with relevant legislation to ensure fairness. Within this, the error rate is not specifically prioritised at the expense of other considerations such as effective delivery of access to justice or sustainability considerations; the Agency maintains a balanced approach. The LAA continues to invest in making improvements to digital services and processes to enable quick and accurate payment of bills, and assessment of eligibility in line with Legal Aid Regulations. The LAA is currently developing an online tool called Apply, which aims to significantly improve the civil application process for providers.

Alongside this, the Criminal Legal Aid Independent Review is considering the extent to which Criminal Legal Aid contributes towards the efficiency of the Criminal Justice System. It will assess how administrative requirements affect providers, how this compares to other professions and whether the underlying policies should be revised to reduce Government and provider administrative costs. The review will also consider how systems and contracts could be made more flexible to allow providers to innovate or adapt to changing market conditions.

Recommendation 41: The Government should consider creating a system of earned autonomy that places more trust in the decision making of providers with strong records of high-quality decision making. The Agency's processes should have some incentives for providers to work towards gradually reducing the burden of administrative requirements.

Given the difficulties facing legal aid providers, placing greater trust in their ability to decide on eligibility would expand their capacity which would be beneficial for access to justice.

The LAA takes a proportionate and reasonable approach to contract management and assurance. The LAA seeks a balance between having confidence in the quality and compliant service provided to clients, the use of public funding, and the administrative burden on providers. Prior to the pandemic, the LAA had reduced their volume of provider audit activities by 16% compared to 2017, with 40% fewer Contract Notices issued, and had reduced their administrative spending on audit activity by 14%. Following the outbreak of COVID-19 the LAA reviewed and paused non-essential Contract Management activity to reduce the administrative burden on providers. The LAA continue to look for opportunities to make this process easier and will be reflecting on the approach taken during the lockdown period of remote audits and increased use of electronic files, to ensure the audit burden on providers remains proportionate.

Recommendation 42: The Government should consider enabling the Legal Aid Agency to provide specific support to legal aid providers to bring in trainees. This support should be targeted to areas where there is a particular shortage of specialist advice.

As part of our ongoing work considering the sustainability of the civil legal aid market, we are considering how best to support the legal aid workforce. This includes consideration of funded posts within legal aid providers including the funding of training contracts.

Recommendation 43: If the Government were to accept the recommendations we have made on how to approach criminal and civil legal aid it will be necessary to address the Legal Aid Agency's priorities, its institutional capacity and how it uses its resources. The Government should consider whether the Legal Aid Agency should expand its data collection and publication in order to better inform the development of legal aid policy.

In July, the MoJ published its Outcome Delivery Plan (ODP) for 2021–22. One of the three strategic outcomes set out in the ODP is to deliver swift access to justice. The LAA has in turn set out its Strategy and Business Plan, which has been agreed by the Ministry and which outlines how it will support the MoJ to achieve that outcome. This ensures the LAA continues to deliver its functions in line with ministerial priorities. Future versions of the LAA Strategy and Business Plan will outline how the LAA will meet the response to the Criminal Legal Aid Independent Review, Means Test Review and the Government's response to the JSC report, alongside other priorities and within the agreed spending limits set in the Spending Review. Consideration as to what data we collect, how we collect it and what we use it for is subject to routine review both by the Ministry of Justice and the LAA. The value of appropriately targeted quality data at every stage of the process is well understood; from policy development, to service design, implementation and delivery; and underpins public trust. Operationally, the LAA relies upon reliable data and evidence to support decision making and to safeguard the public purse. The Committee should be reassured that effective data collection, analysis and publication remain a priority and the MoJ and LAA will continue to work together to identify any further opportunities in this area.