

Written evidence submitted by Resolution (ATJ0037)

Introduction

Resolution is an organisation of 6,500 family lawyers and other family justice professionals in England and Wales, who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for better laws and support for families and children undergoing family change. Our members have a strong interest in improving access to justice for the families they work with on a daily basis.

Summary

- There are severe recruitment and retention problems for our legal aid members raising concerns about the sustainability of and access points to family and mediation legal aid services. This inevitably reduces access to justice for those on low incomes.
- There is a role for supplementary family legal support and advice services in supporting access to justice, but this is no substitute for specialist legal advice and investing in family legal aid and its future.
- The impact of those acting without legal advice and/or representation on access to family justice is severe. Both those unrepresented individuals and other families and children are caught up in an overburdened family justice system.
- Government needs to recognise the role of wider access to family legal aid to reduce family court backlogs. Other potential funding options are unrealistic and no substitute for legal aid.
- Measures to improve the sustainability of both family legal aid and legally aided family mediation to make delivery economically viable and preserve access to justice are urgently needed.
- Early family legal advice and legal aid for representation of both victims of domestic abuse and alleged perpetrators/perpetrators would increase access to justice and save family court resources.
- Our members are driven by a desire to support people facing challenging family issues. Pro bono, free legal advice and unpaid legal aid work support access to justice, but none of these should be seen as an alternative to an accessible and sustainable legal aid scheme.
- Advice and non-court dispute resolution are both a key part of early resolution of private family law matters and keeping them out of court.
- Access to legal and procedural information, and early collection of information, for example, to inform specialist and tailored legal advice can be supported by digital innovation provided there are appropriate safeguards, inclusive design, standards and investment. A one size fits all approach is not for everyone, especially when dealing with the needs of families and children facing family separation.
- It is concerning if the Legal Aid Agency (LAA) cyber-attack has undermined confidence in the protection of sensitive information provided by family and other clients, and/or heightened perception of risk for survivors of domestic abuse. Both those consequences could affect confidence in seeking legal advice when vulnerable people need it most.
- For legal aid providers, the relevant regulations have offered some relief from the consequences of the shutdown of LAA systems. However, many of our members have reported that emergency measures have remained administratively burdensome and not fully compensated for lost cashflow and time. Administration, losses and fear of the LAA's future approach on audit will have reduced capacity to see clients. Our evidence includes direct feedback to us by members about the impact of the cyber-attack and the LAA's response.
- Some of the points we raise in relation to private children cases may be impacted by the current Pathfinder pilot. We do not explore this in responding to this particular inquiry, but

future decisions on private family legal aid and access to justice need to take the impact of Pathfinder, if and as it is rolled out further, into account. It may be a topic the Justice Committee wishes to explore in the future.

How does the current state of the legal services and representation market in England and Wales, and associated operating pressures, affect access to justice for clients?

1. There are severe recruitment and retention problems for our legal aid members raising concerns about the sustainability of and access points to family legal aid services. Our members tell us that the reason practitioners are increasingly reluctant to provide legal aid services is because the level of fees is so low. In 1996, when fees were last increased, legal aid rates for certificated cases were £66.00 per hour for cases in the County Court, and £75.00 per hour for the High Court. According to the Bank of England inflation calculator, the equivalents today would be £126.00 and £144.00 per hour. Instead of any increase, rates were cut in 2011, so the current hourly rate for cases heard at District Judge, Lay Justice or Circuit Judge level (equivalent to the old County Court rate) is £54.90 (£56.70 for advocacy) and the High Court rate is £65.75. These hourly rates do not meet the cost of running a practice. The Law Society's Leadership and Management Section Financial Benchmarking Survey 2023 (produced by Hazlewoods LLP Accountants) found that the median cost per employed fee-earner was £60,551 per year or £111.48 per hour. The current legal aid rates per hour are less than 50% of the median cost of employing a solicitor for an hour.
2. Family fee schemes were introduced before the implementation of the LASPO Act 2012 on the basis of the swings and roundabouts of cases balancing each other out. In the post LASPO world qualifying cases are more complex and are not balanced by simpler cases compounding the challenges of low fees.
3. Family mediators face similar issues around low rates of legal aid pay (including for all issues child inclusive mediations and cases involving more than two participants) and the burden of administration and audits involved in providing legal aid services. Mediators report that the Family Mediation Voucher Scheme is better remunerated than legal aid mediation.
4. The Ministry of Justice's Family deep dive, 3 March 2025, notes that 'There has generally been a reduction in the number of active family legal aid firms over the period¹, with an overall decrease of 25%. The number of active family legal aid firms completing private family work has decreased by 28%, while the number of active family legal aid firms completing public family work has decreased by 23%. These are larger than the overall decrease of 22% for all active civil legal aid firms.'
5. Research on the Sustainability of civil legal aid commissioned by The Law Society, 9 May 2024, found that 'Family legal aid is now loss-making for half of the providers that we have engaged with...Family providers' losses appear to be primarily driven by the provision of private Family legal aid work.'
6. This inevitably reduces access to justice for those on low incomes.
7. An example of the way low fees impact on mediation for people experiencing relationship breakdown is that mediators find it almost impossible to find firms to draft consent orders confirming the Memorandum of Understanding following mediation under the Help with Family Mediation scheme. In finance cases, properly drafted consent orders are essential

¹ Between FY2014-15 and FY2021-22

once a settlement has been reached, to achieve certainty and finality in divorce, Schedule 1 or TOLATA matters, to maintain a framework for the parties concerned and to ensure suitable enforcement options should there be inadequate adherence to settlement. This means that although the parties have reached an informal agreement it cannot be formally implemented. The flat fees of £150 for advice and £200 for drafting an order do not allow sufficient time to consider all the possible issues, especially when finance, including pension-sharing arrangements, is involved. The risk of a subsequent claim against the solicitor is too great to justify the fee. Therefore, as legally aided participants cannot afford to pay for legal advice, people cannot finally resolve issues arising from relationship breakdown and move on with their lives.

What is the role of supplementary advice services in supporting access to justice?

8. There is of course a role for wider family legal support and advice services in supporting access to justice and reducing barriers to legal help, especially where access to legal aid is restricted. The reality is though that successive governments have looked to those services to give a limited number of people access to justice, rather than investing in legal aid and its future. Relying on not-for-profit and voluntary organisations to advise on many matters is not realistic given wider pressures on their funding streams, and the often short term nature of their funding arrangements.
9. Since 2020, Resolution has been working with Advicenow to provide affordable specialist legal advice (via unbundled help for a reduced fixed fee provided by one of a panel of Resolution members). Demand has shown steady increases and approximately 50 people, including women and low-income households, who would otherwise have gone to court or negotiated the family justice system on their own, are now having appointments each month. People who attend appointments with panel solicitors are primarily seeking help with financial arrangements on separation and divorce, and a minority on child arrangements or both.
10. Findings from evaluation of the Affordable Advice Service show that users welcome the 'Where do I stand?' appointment, which enables litigants in person to access advice at an early stage in their legal journey and helps inform them of whether they should deal with issues via court. There are examples of users of the service crediting the legal advice provided by the Resolution panel solicitor with helping them settle out of court.
11. Advicenow have informed us that 62% of users of their family guides surveyed reported an improvement in the understanding of their problem and 57% reported feeling more confident and 51% were able to act. Affordable Advice users reported significantly higher levels of legal capability improvement. 84% of users of the Affordable Advice Service said it helped them take action and showed them how to do it. 78% said it had helped them to make their case better. This suggests that augmentation of materials with one off advice makes a considerable difference to the user's ability to understand, navigate and then act upon their problems.

What is the impact of those acting without legal advice and / or representation on access to justice?

12. With the majority of private family legal aid removed from scope further to LASPO, together with the current financial eligibility rules and approach to means-testing, an increasing number of litigants have had no choice but to represent themselves in the family courts.

Those who don't fall within the parameters of the domestic or child abuse gateways, don't have the prescribed evidence to meet the requirements of such and/or are of modest means just don't qualify for private family legal aid. They don't realise where their case lacks merit, or may be unaware that the outcome they want from the court will not be achieved or speedy. We are concerned about those who may simply give up and lose contact with their children or do not pursue legitimate applications as they cannot cope with proceedings alone. They are often also unaware of out of court options without the benefit of legal advice. Others find themselves unsupported in the court process facing dealing with contested allegations, fact-finding processes or a generally obstructive opponent without the knowledge to be able to focus their case to the issues and achieve the best outcome. The impact on those amongst lower socioeconomic and vulnerable groups who don't have family or others who can fund them or guide them is all the greater.

13. Given the online divorce process and the huge swathes of unrepresented parties, many people may, for example, be divorcing ignorant of their financial rights and therefore bringing no claims. The vulnerable do not always have access to the support and protection they need. The NAO's report 'Government's management of legal aid', 9 February 2024, found that between January to March 2023 in 40% of family dispute cases, neither the applicant nor respondent had legal representation. This was contrasted with 14% of unrepresented parties pre-LASPO in January to March 2013.
14. Our Legal Aid Committee members report that they are often appointed in Rule 16.4 cases² where there may be two parents who are litigants in person and a child may be the only party represented and the court needs assistance from a solicitor in the case. Their experience is that these Rule 16.4 cases are complicated and lengthy - in part due to the presence of litigants in person - and the administrative burden for the case then rests on the child's solicitor increasing costs to the legal aid fund.
15. The narrow scope of private family legal aid and volume of those without representation contributes to delay and access to justice for all families in the system. Our members who sit as judges tell us about the significant amount of judicial time (and their own time) spent dealing with cases with two litigants in person, undertaking case preparation and drafting of orders, which could be spent hearing other cases and reducing court backlogs. The hard pressed judiciary are spending time doing what far less expensive legal aid lawyers could undertake if there was a more sensible approach to the scope of family legal aid and the domestic abuse gateway.

Without impacting the public purse, what potential funding options would increase access to justice? e.g. an access to justice fund levy, conditional fee arrangements, third party funding.

16. For family law cases, there is little scope to consider alternative funding facilities as invariably those eligible for legal aid lack the resources to fund such alternatives. If there were such schemes practitioners would have sought to conduct cases in that way so as to be able to charge at more commercial rates and avoid the interminable bureaucracy of the legal aid system.
17. The Ministry of Justice is currently considering the introduction of a scheme to secure interest on all client accounts. We do not consider that such a scheme would be a viable funding option. This would provide little reliability and certainty around incoming legal aid

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

funding, particularly when interest rates are low, and require disproportionate administration. There are of course currently professional rules around accounting for these funds to the clients in question. As well as legal aid firms relying on client interest, many firms, especially conveyancers, rely on client account interest to generate income to keep professional fees down for the house selling and buying public.

18. Sticking plasters, without realistic investment in family legal aid, will simply not address the all the problems and the costs outlined in paragraphs 14 and 15. The Public Accounts Committee has recently made recommendations to improve family court services for children and the timeliness of family justice. Government needs to recognise the role of wider access to legal aid to reduce family court backlogs.

If limited funds were available, what would be the priority areas for spending?

19. Measures to improve the sustainability of both family legal aid and legally aided family mediation and make the delivery of legal aid services economically viable for providers are urgently needed. As in other areas of law, family legal aid has been significantly underfunded for a number of years, and our members are facing tough choices as to whether to continue with legal aid contracts. Our members are driven by a desire to support people facing challenging family issues, but this also needs to be financially viable in order to continue doing so.

20. Otherwise, our main priorities would be:

- a. Early family legal advice that is pertinent to people's individual circumstances to help people find solutions at an earlier stage, understand their legal rights and responsibilities and where court is inappropriate, manage expectations on outcomes and as a point of referral away from or to court, for example, to mediation (where that is the right solution for the family), freeing up valuable court time for those cases which most need judicial input.

The importance and positive impact of early access to legal advice (which advice is not representation) is well recognised. It can help people feel empowered and confident that they don't necessarily need a judicial decision and about entering mediation or other out of court dispute resolution. In a survey of our membership, 68% agreed publicly funded legal information and early legal advice would benefit their clients: "It would manage expectations from an early point, meaning less likelihood of contested matters in future."

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

Scaling up of The Affordable Advice Service (see paragraph 9) to increase its capacity to provide potential litigants in person with a "Where do I stand?" appointment to support the use of out of court dispute resolution would be one way of providing more early legal advice. Referring to advice provided via this type of service would

also reduce the need for mediators to provide legal information and enable them to focus on facilitating agreement between the two parties, as well as enabling more people to have legal advice on any legal issues arising within the mediation.

- b. Legal aid for representation of both victims of domestic abuse and perpetrators in private children cases. The issue of perpetrators using the family justice system to abuse victims is much wider than cross examination; there are ancillary issues including repeat applications and dragging out the process. It can also be the case that a perpetrator is legally represented but the victim is not. Many survivors never report the abuse they have experienced, for example, sometimes only disclosing their experience for the first time when consulting a solicitor about a private family law matter. Legal aid for representation of both victims and perpetrators³ up to and including fact finding in private family cases, without the need for gateway evidence as currently prescribed, would in our view address the problem of perpetrators seeking to use the family court process to abuse their victims more effectively than the Qualified Legal Representative scheme alone, as well as providing equality of arms.

21. Other areas for consideration are:

- a. The extension of the availability of legal aid to a wider range of out of court dispute resolution than mediation only, and for Resolution's single family lawyer scheme (Resolution Together). Mediation is not always suitable and another way of resolving a dispute may be more suitable. People with limited means should be able to choose which out of court method will be most suitable for them, or to use Resolution Together where they are able to manage their separation or divorce together. Otherwise, their only choice is do nothing or go straight to court.
- b. Expansion of the scope of the existing Family Mediation Voucher Scheme (which we support and support continuing beyond March 2026) to:
 - i. Mediations about finances on divorce, and for the drafting of consent orders, as well as mediations relating to child arrangements. The mediation process differs from the court process and the current restrictions can make the mediation process more complex and restrictive than necessary.
 - ii. Other out of court dispute resolution processes, including family arbitration and collaborative law, as these are additional ways to help families reach agreement and reduce the burden on the family courts.
 - iii. Resolution Together (see above).
 - iv. Fund legal advice to support and inform the mediation process on any legal issues within the mediation to make the mediation more robust, as a protective measure and to facilitate implementing what the participants have agreed workably and via a legally binding consent order, including in complex situations.

22. We reiterate paragraph 18 above.

³ Technically, legal aid for respondents remains in scope, subject to means and merits assessment, for civil legal services provided in relation to home rights, occupation orders and non-molestation orders under Part 4 of the Family Law Act 1996. But is extremely difficult to persuade the LAA that an (alleged) perpetrator meets the merits test. A respondent may present their own gateway evidence for a private family law legal aid application where there are cross allegations, which as for victims will be subject to means and merits assessment, or occasionally successfully apply for exceptional case funding.

How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

23. Many of our members offer free initial meetings and/or are involved in local pro bono initiatives. The value of this should not be underestimated, but this should not be seen as an alternative to an accessible and sustainable legal aid scheme.
24. A high level of currently unpaid work is also undertaken by legal aid providers before legal aid is granted, around legal aid contract administration, and such as for child inclusive mediation (where there is no fee element for meeting any number of children). For example, it takes longer to work with clients who need interpreters or who have additional needs, say due to neuro-diversity, and this time is often unremunerated, either due to the structure of a fee scheme or because the interaction takes place before evidence of eligibility is produced.
25. Our members also report that if the other party is a litigant in person, they are often expected to do extra administration to ensure the case runs smoothly. If the solicitor is representing a party under a legal aid certificate this may mean they will not be paid for the work they do due to the way the fixed fees operate.

How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

26. The NAO's report 'Government's management of legal aid' stated that 'Providing access to early legal advice and mediation has the potential to reduce wider costs to the system'.
27. Early resolution is more likely if early family legal advice is funded, enabling more effective triage. Providing families with access to tailored legal advice should be seen as an integral part of encouraging the use of out of court dispute resolution and maximising its chances of success, and to manage people's expectations before the making of any application to court. The experience of our members is that the provision of early/timely legal advice and signposting often leads to families choosing a non-court-based approach – sometimes mediation, but sometimes other (more appropriate) forms of resolution. Where they are underpinned by even a relatively small amount of information and advice about the law, these solutions are far more likely to succeed and the outcomes reached, endure.
28. It is well recognised that prior to LASPO, the majority of referrals to mediation were made by legal aid funded solicitors. The removal of private family legal aid from the scope of legal aid removed the opportunity to refer cases towards mediation.
29. Resolution surveyed its members from 9 September to 8 October 2021 about their experience of dispute resolution processes over the then previous 12 months (through conducting these processes themselves or referring clients to them). 367 members responded to the survey in full. The results indicated that lack of support from a legal professional was one of the main reasons for parties not taking up out of court dispute resolution where it could resolve their case (64% of those who responded cited this as a main reason in private law children cases, and 71% in private finance cases). 69% of those who responded thought that one or both parties not being supported by legal advice alongside the process was one of the main reasons for out of court dispute resolution not resulting in settlement of a finance dispute.

30. Family mediators and other out of court dispute resolvers are of course also a key part of early resolution of private law matters and keeping them out of court. Our member survey in 2021 asked whether, overall, respondents thought out of court dispute resolution processes or court are more likely to be successful in achieving better and lasting outcomes. Views were mixed but weighted towards out of court processes being more likely to be successful, overall, in relation to both private law children outcomes and finance outcomes for couples.
31. Resolution has always believed that there is a better way. Mediation and other dispute resolution processes are effective processes in the right circumstances. There is no doubt that they can provide more bespoke and creative solutions than court, again in the right circumstances. And it must be the case that some of those self-representing in court (for example, where their case did not involve strict legal principles, or serious or complex issues) would be less in conflict and distress if they had made use of or been able to make use of other dispute resolution.

What role is there for digital innovation and data collection in supporting access to justice?

32. We believe that, with appropriate safeguards, inclusive design, standards, investment and collaboration between Government, lawyers and others, access to legal and procedural information should be increased by digital innovation.
33. We see a particular role for it in the early collection of information, for example, to inform specialist and tailored legal advice and reduce costs. And we have long called for a government digital system to securely assess financial eligibility for legal aid to reduce the disproportionate burden and risk on legal aid providers.
34. But one size fits all is not for everyone, especially when dealing with the needs of families and children facing family separation. There is always a risk of excluding those with limited or no access to the internet, technology or digital literacy. Those on low income and most in need of access to justice, without any help, are most likely to be digitally excluded. Our members have reported to us on the disproportionately negative impact on such families of the use of technology by HMCTS and in the family courts during the Covid pandemic. In particular, vulnerabilities of those involved in children law proceedings such as mental health or cognitive issues; or English as a second language, can mean they are or feel even more disadvantaged and removed from the justice process. 91% of respondents to a recent member survey we conducted agreed or strongly agreed that people who struggled with technology were disadvantaged within the family justice system to a greater extent during the pandemic.
35. It has long been recognised that improved systematic data collection is required across the family justice system to better inform policy development and take an evidence-based approach to seeking efficiency.

How could the current system of legal aid be improved to provide a cost-efficient and cost-controlled service, with suitably remunerated legal practice across civil, criminal and family law?

36. The situation facing legal aid family lawyers and mediators offering legally aided family mediation, and more importantly for the families and children who need their services, is not good. We would stress the need for a sustainable legal aid system to be more urgently addressed, and have asked the Ministry of Justice to set out a clear timetable for investment

and future investment in family and family mediation legal aid. This is not only about increasing the fees paid, but also about addressing the gaps in and complexities of the domestic abuse gateway to private family legal aid, and the level of unpaid work for providers around gateway evidence gathering.

37. Resolution has long called for:

- a. A realistic and index linked increase in legal aid rates so that it would be possible to pay staff undertaking legal aid work more and to properly remunerate them/make the service economically viable for providers.
- b. Reasonable fees for Help with Mediation for a consent order confirming a Memorandum of Understanding following mediation, so that people are not left vulnerable despite reaching a settlement in family mediation.
- c. The reinstatement of a trainee grant scheme for all categories of legal aid work.
- d. A minimal administrative and evidence burden for applicants for legal aid and legal aid providers in applying the means test for legal aid.
- e. A fee for means assessment, in particular for controlled work.
- f. A realistic and index linked increase in legal aid rates paid for family mediation.
- g. A separate fee element for child inclusive mediation where the mediator meets with the child.
- h. A minimal administrative and evidence burden for applicants for legally aided mediation and mediation providers in applying the means test for family mediation.
- i. Properly funded Mediation information and assessment meetings.
- j. A fee for means assessment on a mediation intake, including a fee for undertaking a means assessment which is then abortive due to failure to then provide substantive evidence.
- k. Recognition in the mediation fee scheme that there may be more than two parties to mediation in cases involving kinship carers and special guardianship.

38. It is unclear to us why Statutory Charge repayments are not being credited against the legal aid fund, to reflect the true cost of legal aid in family finance cases. However, the Statutory Charge⁴ is a fundamentally fair way of funding finance based litigation and if legal aid were once again widely available for family finance cases, they would to a significant extent be self-financing whilst at the same time saving local authorities and England and Wales government expenditure elsewhere.

⁴ The Statutory Charge operates where those in receipt of family legal aid who either retain or obtain a financial benefit (other than maintenance) from their representation are obliged to repay all of their legal costs to the legal aid fund.

What has been the impact of the Legal Aid Agency cyber-attack, revealed in April 2025, on recipients and providers of legal aid work, and how have the Legal Aid Agency and Ministry of Justice responded?

39. We do not believe that there has been any confirmed evidence of publication of personal data of legal aid recipients. But it is concerning if the attack has undermined confidence in the protection of sensitive information provided by family and other clients, and/or heightened perception of risk for survivors of domestic abuse. Both those consequences could affect confidence in seeking legal advice at the time when vulnerable people need it most. And the attack has highlighted the importance of data protection and safety, and contingency planning, for vulnerable legal aid clients.
40. For legal aid providers the Criminal and Civil Legal Aid (Amendment) Regulations have offered some relief, but many of our members have reported that emergency measures have remained administratively burdensome and not fully compensated for lost cashflow and time. Administration and losses will have reduced capacity to see clients.

Communications with providers

41. Although members had reported earlier that there had been some issues with CCMS, Resolution first became aware that the Legal Aid Agency (LAA)'s system had been hacked due to a story on the BBC website on 19 May. Resolution then contacted the LAA for information.
42. By 20 May the LAA seemed reluctant to invoke contingency arrangements and there was no information about arrangements to pay providers. On 21 May, a Resolution member sent us the following email:

'There is no information coming out of the LAA other than that there will be another announcement tomorrow. Fifty percent of this firm's income comes from legally aided work and we are going to run into difficulty if this issue isn't resolved urgently.

Our contract manager has not been able to help whatsoever. Part of the problem is that we just don't know what's going on. If it's the case that CCMS will get back up and running later this week, then it probably should be okay, if the LAA prioritise payments for providers.

If however the situation is more draconian and we are actually being faced with CCMS shutting down for a long time, we need to know whether we need to arrange borrowing (if we can) and we need to take urgent steps to secure our cashflow. We also need to know what the contingency arrangements are.'

43. The LAA's communications have generally been poor. For some time, information was provided at frequent, random intervals, not categorised or dated. Currently practitioners have to navigate both the FAQs and the Cyber incident pages. Even now, practitioners do not feel that the information provided meets their needs.

Contingency arrangements

44. This is probably the area of change which will most have affected family clients. Some practitioners are refusing to take on new cases or severely restricting the type of case they

will take on (for example, to non means non merits tested cases) because they are fearful of the LAA's approach on audit, despite the LAA's assurances.

45. The LAA has authorised providers to operate a greater range of delegated functions, but it has caused confusion and apprehension about how the LAA will audit files when things are back to normal. From a member on 10 July:

'We have noticed that there are a couple of inconsistencies...:

Under delegated functions to grant emergency funding, Legal Aid Agency cyber security incident - GOV.UK states emergency representation granted under Delegated Functions will contain 16-week and £4,500 costs limitations (providers have the ability to use delegated functions for a higher cost limit under emergency representation where it can be justified).

Under the new page, Civil contingency - Legal Aid Learning it states: Please note that you cannot amend the time limit of the emergency certificate beyond 16 weeks or authorise an increase to the cost limitation beyond £4,500 excluding VAT, unless justification of exceptional circumstances is provided to the LAA.

As you can see, the older page suggests we can increase beyond where it can be justified while the other says there needs to be exceptional circumstances. There is no guidance as to what 'exceptional circumstances' means or whether we have to provide this to the LAA now or whether we should submit the amendment to costs in due course when we lodge our applications on CCMS when it is up and running again. This is important for family providers to know who could easily reach £4,500 on a family case where there can be hearings in quick succession or expert fees? Could this please be clarified?

For amendments to costs on substantive certificates using delegated functions: Under amendments to substantive certificate using DF, Legal Aid Agency cyber security incident - GOV.UK states if providers seek above £7,900 cost limit following use of delegated functions on a substantive certificate, they can submit the amendment for a decision at a later date, the LAA will exercise the backdating provisions where required.

Under the new page, Civil contingency - Legal Aid Learning, it states the provider can amend a condition or limitation on a substantive certificate only where: The determination being subject to a cost limitation not exceeding £7,900 excluding VAT.

As you can see, the older page suggests we can amend above £7,900 using DF where justified by submitting an application in due course but the newer page suggests that we cannot use DF to increase beyond £7,900 (where costs limit is lower). The vast majority of family certificates have a limit of £25k however there are some finance certificates which have lower limits so this distinction is therefore important.'

46. We are told that LAA caseworkers on the helpline vary a great deal in their understanding of the contingency arrangements, for example a member reported: *'We needed to grant legal aid urgently for an appeal. We looked at the guidance, codings etc and it looked like we could but we wanted to be sure so we called the helpline. We were referred to a senior caseworker who told us we couldn't and we would have to write in to the LAA. We called again the next day and someone else told us that was completely wrong...'*

'Whilst it's all good and well honouring delegated functions on new cases, it's the existing cases that are a problem.'

47. Some of the LAA's contingency arrangements have been welcomed, for example the new domestic abuse evidence checking service, which members would like to see retained.

Contingency payment scheme

48. The civil contingency payment scheme based on a historic period enabled the LAA to make some level of payment but is causing problems. The weekly claims cause additional work for providers and the 'escalation process' is not widely understood. As a result some members are facing considerable financial strain as their current outgoings are higher than the payments during the reference period.

49. Members cannot understand why the LAA cannot process at least some level of bills under the pre-CCMS systems.

'Not being able to raise any invoices against files and add income to the monthly P&L is problematic. Legal aid firms have to have a tight grip on MI and their metrics as the margins are so tight. I do question whether what we have in place is adequate and I also worry about the notional debt that we are incurring, we are looking at [£000,000s] and then the recoupment process – it doesn't sit well.'

50. Some members will have had to arrange finance to cover the lack of legal aid income and will be incurring interest charges.

VAT

51. When members ask whether a contingency payment contains VAT, the LAA staff on the helpline have told them it does, which it does, but only conceptually. The LAA guidance says this:

'The average payment is based on a 3-month simple average and includes POA, bills, disbursements and VAT. The average payment is set based on payments made between February and April 2025, so will not roll over to include May. The LAA will keep this figure under review to ensure it remains appropriate through the life of the scheme.'

52. However, the remittance advices (when they are received, which may require chasing) make it clear that the payments do not actually contain VAT. This is important in terms of submitting returns to HMRC. The LAA helpline refers any caller with VAT queries to HMRC but when members call HMRC they say they don't know anything about this.

53. The reference to the payments concerning disbursements has resulted in some members being put under considerable pressure from experts saying they know the LAA has given them money to pay disbursements and if they don't get paid they will sue them or report them to the SRA. One member said:

'We are having the same problem with the experts' fees, we had to request an escalated payment and send across the LAA a spreadsheet with a list of disbursements we needed to pay out, our [contract] manager sent us the spreadsheet. We hope to receive the payment this Monday. It's an absolute nightmare all of this!'

Administrative burden on providers

54. Members have had to create new systems to manage both the exercise of delegated functions and payments.

'From this side it is very hard to keep up, I have a crib sheet that I have circulated to staff and developed a range of spreadsheets and forms to save to files so that if we are queried when the system is back up we have evidence of our thinking.'

'Our own internal guidance on trying to adhere to LAA contingency arrangements is immense as is the burden on directors having to sign off applications. We have been liaising with our contract manager raising issues as we go along.'

Apprehension about the return to business as usual

55. We now know that it is currently expected that Civil Apply and CCMS will be available for access from mid to late September.
56. Whilst members understand the need for increased security, the onboarding system requires detailed identity evidence and is taking place during the main summer holiday period.
57. Numbers of members have reported their apprehension about the pent-up flow of work for their billing and accounts teams when the system is restored, even though they are preparing bills in anticipation, and the impact of the built up work on LAA resources.
58. They know from past experiences that reconciling contingency payments has been a painful process, involving a great deal of additional correspondence with the LAA on top of current work.

September 2025