

Written evidence submitted by the UCL Centre for Access to Justice (ATJ0099)

Introduction

1. The UCL Centre for Access to Justice (CAJ) is a research centre based at UCL's Faculty of Laws. CAJ combines legal education with the provision of pro bono advice to vulnerable communities. We promote access to justice through research-led education and community engagement. Over the last 25 years, the Faculty's ground-breaking research has had significant impact on access to justice policies and the delivery of legal services both in the UK and abroad.
2. CAJ also runs a legal advice clinic in East London, the UCL Integrated Legal Advice Clinic (UCL iLAC). UCL iLAC holds legal aid contracts in housing, community care and welfare benefits law. We provide legal services in these areas of law both a pro bono and legally aided basis as well as pro bono only education advice and casework. Some of the staff members involved in drafting this consultation work as solicitors at UCL iLAC and have a clear view from the frontline of legal aid practice.
3. We appreciate the opportunity to contribute to this consultation. Our response incorporates a variety of perspectives and aims to offer constructive insights for consideration. It includes contributions from the following members of the Faculty of Laws:
 - Dr Sarah Beardon
 - Ian Browne
 - Prof Dame Hazel Genn KC
 - Sonia Kalsi
 - Rachel Knowles
 - Dr Karen Nokes
 - Michael Marshall
 - Prof Stephen Mayson
 - Dr John Sorabji

Summary

4. Access to justice in England and Wales is in crisis and has been for some time. The legal aid system is unsustainable without urgent reform and investment. While supplementary services, pro bono work, ADR and digital innovation offer partial solutions, they cannot replace a robust, publicly funded legal aid system. The future of access to justice is at risk and urgent action is needed.

Legal Aid System in Crisis

5. Legal aid is severely underfunded, with restrictive eligibility and unsustainable fee structures. Legal aid 'deserts', areas where there are no longer any providers of legal aid, are widespread, leaving large portions of the population without access to legal representation. Recruitment and retention of legal aid lawyers is increasingly difficult due to low pay and high workloads.
6. Multiple reviews of legal aid have identified persistent issues: administrative inefficiency, low pay, overly restrictive eligibility, and lack of providers. Without significant investment, the system is unsustainable. Legal aid and access to justice are linked to broader public health and social outcomes that should be considered when thinking about budgetary matters.
7. The Legal Aid Agency cyber-attack has had serious financial and operational consequences for providers. The response has been perceived as inadequate, further eroding trust in the system and pushing providers to breaking point.
8. Investing in legal aid is essential to sustain it. Legal aid rates should be increased across all existing contracts to ensure current providers do not collapse and also to attract and retain lawyers. Support training and entry routes for junior lawyers, including reinstating training grants and facilitating visa options for international students wishing to enter the sector.

Supplementary Advice Services and Pro Bono are Valuable but Insufficient

9. Services such as Citizens Advice, Law Centres, and university clinics provide critical support but are fragmented and under-resourced. These services cannot replace legal aid due to limitations in scope, funding, and capacity. Co-location of legal advice with health and community services offers potential for holistic support and early intervention.
10. Over-reliance on pro bono and supplementary services also raises concerns about fairness and sustainability. Further, a full evaluation of such options is difficult without a clear strategy on legal aid reform and the principled basis on which legal aid and any supplementary services might be delivered including the relationship between the two.

Litigants in Person Face Significant Barriers

11. Individuals without legal representation struggle to navigate complex legal systems, leading to delays, poor outcomes, and emotional distress. Vulnerable groups are disproportionately affected, and digitalisation has exacerbated exclusion for many.

Alternative Funding Mechanisms Are Partial Solutions

12. Conditional fee agreements, damages-based agreements, third-party funding, and legal expenses insurance offer some relief and could be further expanded upon but cannot replace legal aid. Consider promoting legal expenses insurance and regulating third-party funding.
13. An Access to Justice Levy could be considered but must be carefully designed to avoid unintended consequences. Consider a targeted Access to Justice Levy based on profits from litigation and litigation funding. This is considered in further detail at Q4 below.

Regulatory Efforts are Mixed

14. Legal services regulators have promoted innovation and technology, but digital exclusion and unregulated providers pose risks. There is limited evidence that regulatory actions have directly improved access to justice or whether they could without overstepping their remit.

Early Resolution and ADR are Underutilised

15. Preventive justice and alternative dispute resolution methods can potentially reduce conflict and improve outcomes. These approaches require strategic investment and exploration of integration into community services. Consideration should be given to investing in legal health promotion and ADR mechanisms. Embedding legal support in community hubs and integrating with public services might increase its accessibility. However, early resolution and alternative dispute resolution methods do not eliminate the need for legal advice and representation, and any such consideration must be closely aligned with legal aid policy and not separate from it.

Digital Innovation Must Be Inclusive

16. Digital tools can enhance access to justice but must be designed with user needs in mind. Face-to-face services remain essential, especially for vulnerable clients who may be digitally excluded. Data collection is vital for evaluating impact but must be balanced with privacy concerns.

Q1. 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?

The legal services and representation market in England and Wales includes ‘reserved legal activities’ ([section 12, Legal Services Act 2007](#))¹ that are restricted to regulated legal services professionals as well as [unregulated legal services](#)² where individuals and firms offer legal advice, representation and other types of legal help without being regulated specifically for those services. Our response to Question 5 addresses the role of legal services regulators and access to justice in detail.

Thompson Reuters provides a helpful overview of the state of the legal services market and associated operating pressures annually³. It is worth noting that this report focuses predominantly on corporate and commercial legal services rather than legally aided services. The market for these services and operating pressures are wildly different. It is of note that budgetary pressures and the advance of AI mean that clients in the corporate sector are looking for increased price transparency and value for money. However, ultimately clients accessing these services will be supported to access justice without difficulty. There is also a clear trend in increasing pro bono activities in this market not just for altruistic purposes but also because it appears to be good for business⁴. Whilst increasing pro bono services can help those in need access justice, there are limitations to pro bono services which are outlined further in Q6.

The key legal services market that is most at risk and is also the market that helps those who most struggle to access justice is those who provide legal aid services. As UCL iLAC deals with social welfare areas of law, the response to this question focuses primarily on the civil legal aid sector and how its current limitations affect access to justice for clients. Question 3 deals with supplementary advice services.

The [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)⁵ (LASPO) came into effect in 2013 and introduced substantial reductions to the scope of, and eligibility for, legal aid, as well as fees that would be paid to lawyers doing legal aid work. Legal aid is generally limited to when a legal problem has reached crisis point. The evidence on the negative impact of such reform is significant. Earlier reports include Warwick’s Centre for Human Rights report⁶ on the impact of cuts to civil legal aid on practitioners and their clients in 2013, [Amnesty’s ‘Cuts that Hurt’ Report](#)⁷ in 2016, the [Bach Commission “Right to Justice”](#)⁸ report in 2017, the [Equality & Human Rights Commission report](#)⁹ on the impact of pathways to justice in 2018 amongst others.

¹ Legal Services Act 2007 c.29.

² Mapping unregulated services, Legal Services Board, June 2022.

³ <https://www.thomsonreuters.com/en-us/posts/legal/uk-legal-market-report-2025/>

⁴ <https://www.trust.org/2025/02/05/2024-index-of-pro-bono-findings-revealed/>

⁵ Legal Aid, Sentencing and Punishment of Offenders Act 2012 c.10.

⁶ *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients*, Centre for Human Rights in Practice, University of Warwick, 2013.

⁷ Amnesty UK *Cuts that hurt: The Impact of Legal Aid Cuts in England on Access to Justice*, (2016).

⁸ *The Right to Justice*, final report of the Back Commission September 2017.

⁹ James Organ and Jennifer Sigafoos, *The impact of LASPO on routes to justice, Equality and Human Rights Commission* (2018).

In 2019 the government's [Post-Implementation Review](#)¹⁰ identified emerging themes which included that legal aid scope changes were undermining value for money, that people who need legal aid cannot access it, that the Exceptional Case Funding scheme wasn't working, that fees for legal aid work were inadequate, that there had been an increase in litigants in person generating cost, as well as the existence of legal advice deserts. This was further evidenced in the [Westminster Commission on Legal Aid](#)¹¹ report on the recovery and sustainability of the sector 2021 and 'We are Legal Aid' and Findings from the [Legal Aid Census](#)¹² in 2022.

The Law Society's heat maps illustrate the fact that even if individuals are eligible for legal aid, they will find it difficult to find a legal aid provider, due to the increase of [advice deserts](#) as a result of practitioners and firms finding it very difficult to survive in the current climate. Law Society statistics indicate that in June 2025 69.9% of people do not have access to a legal aid provider for community care matters and in February 2024 that nine in ten people do not have access to a legal aid provider for education issues, 44% do not have access for housing, 63% do not have access in immigration and asylum and 85% do not have access for welfare benefits¹³. While the precise extent of legal aid deserts might be disputed, it has been noted in Natalie Byrom's 2024 report ['Where has my justice gone?'](#)¹⁴ that both the MoJ and the Legal Aid Agency "acknowledge that there are some areas of England and Wales where there may be unmet need in certain categories of law, including housing, immigration and advice in police stations".¹⁵

So far there is little evidence to suggest the legal aid sector's long-term sustainability has been significantly improved. UCL Laws' Centre for Access to Justice [responded](#) to the 2024 call for evidence for the [Review of Civil Legal Aid](#)¹⁶ through a staff/student collaboration focusing on the challenges and barriers facing students wishing to pursue careers in legal aid, highlighting that it was often quite simply not a financially viable option, particularly in the light of the cost of legal education and the ongoing cost of living crisis.

The ensuing 2025 [Review of Civil Legal Aid report](#)¹⁷ highlights much the same issues as previous reports: lack of legal awareness and legal capability, the escalation and clustering of legal issues and the need early intervention, the high levels of demand for legal aid services within a struggling legal aid market, and a legal system that is not designed with the lay person in mind.

¹⁰ Post-Implementation Review of Part 1 of LASPO, MoJ, February 2019, CP 27.

¹¹ Inquiry into the sustainability and recovery of the legal aid sector, October 2021 https://www.apg-legalaid.org/sites/default/files/The%20Westminster%20Commission%20on%20Legal%20Aid_WEB_0.pdf

¹² Denvir, Kinghan, Mant, Newman & Aristotle, We are Legal Aid: Findings from the 2021 Legal Aid Census, March 2022 https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid-Findings-from-the-2021-Legal-Aid-Census_Final.pdf

¹³ <https://www.lawsociety.org.uk/campaigns/justice-and-rule-of-law/civil-justice/legal-aid-deserts>, accessed 25.9.25

¹⁴ Natalie Byrom, Where has my justice gone?, Nuffield Foundation, March 2024.

¹⁵ Natalie Byrom, Where has my justice gone?, Nuffield Foundation, March 2024, p.15.

¹⁶ Review of Civil Legal Aid, MoJ, 30 January 2023.

¹⁷ Review of Civil Legal Aid: overarching summary report, MoJ, 24 January 2025.

The 2025 consultation response [Civil legal aid: Towards a sustainable future](#)¹⁸ led to an uplift in the rates paid for all forms of housing and immigration legal aid work as a step towards improving the long-term sustainability of the legal aid market.

While such review and reform are to be welcomed, the extent to which the steps taken so far have, or will, improve the viability of the legal aid sector or improve access to justice for clients is not clear. It is suggested that a much larger injection of funds is needed if the legal aid system is to have any chance of surviving. The issue of where such money might come from is dealt with in responses to Q4 and Q5 below. If alternatives to public funding/methods by which individuals can access legal help are considered, the principled basis on which these might be viable options needs to be clearly identified. See also our related response on pro bono at Q6.

Finally, one option for consideration might be to adapt the high trust legal aid scheme in the Netherlands for England and Wales as explored by the Law Society in their 2025 [report](#)¹⁹, although this will not be without its own challenges as it is designed for a quite different legal system and is likely to need some element of funding in any event.

Q2. What is the role of supplementary advice services in supporting access to justice?

Individuals who recognise they have a legal problem but are unable to afford to pay for legal services themselves and are ineligible for legal aid (or are eligible but are unable to find a local provider), may seek free or lower cost help from other supplementary advice services. These range from organisations that may just provide legal/other information or support to those that can offer more substantive legal help or representation. It includes [Citizens Advice](#), the [Law Centres Network](#), the [LawWorks Network](#), [Advocate](#), the [Free Representation Unit](#) as well as [other national providers of legal advice](#), self-help and online resources such as [Advice Now](#) and the [Ombudsman](#) schemes. There are also organisations that support litigants in person navigate their way through the legal system, such as [Support through Court](#). Sources of legal help are set out in the August 2025 House of Commons briefing, '[Legal help: where to go and how to pay](#)'²⁰.

The [Low Commission in 2014](#)²¹ recommended a more strategic approach to legal support, bringing together the range of support services across England and Wales and this was reflected in the MoJ's [2019 Legal Support: The Way Ahead](#).²² The recently formed [Legal Strategy Support Delivery Group](#) seeks to build on this premise further. The precise detail of any strategy to be adopted remains to be determined. While there is value to the examination and evaluation of both legal aid alongside other advice services, it is suggested that it will be difficult to determine what and how advice services are, or should, supplement

¹⁸ Civil legal aid: Towards a sustainable future, consultation response, MoJ, 2 July 2025.

¹⁹ 21st Century Justice Final Report, Law Society, June 2025.

²⁰ Legal Help: where to go and how to pay, House of Commons Library, August 2025.

²¹ Tackling the Advice Deficit: A Strategy for access to advice and support on social welfare law in England and Wales, Low Commission, 2014.

²² Legal Support: The Way Ahead, MoJ, February 2019, CP 40.

legal aid provision until conclusions on the function, value and purpose of the legal aid system have been clearly reached. The principled basis on which more/less/the same weight will, or should, be placed on such supplementary advice services also needs to be determined.

Further, while there may be some merit to having a diverse range of supplementary advice services available, there is the risk that such variability in type, scope and availability may lead to confusion and inconsistent access, meaning that they cannot be relied on to adequately plug legal aid gaps. Individual organisations are also subject to their own limitations. First, without a legal aid contract, they are unlikely to be able to deal with a client's case from start to finish but instead only give one off/limited advice or signpost to other organisations. Second, it is common for one legal problem to snowball into others and these supplementary advice services are not designed or resourced to be able to deal with such variation and complexity. Third, advice services are often funded through not one but a range of sources including central or local government allocations, donations, foundations and lottery grants as well as being supported by those who work on a pro bono basis (see below our response to Q6 on pro bono). Such fragmented and unreliable funding presents significant operational challenges, leading to such organisations struggling to stay afloat, e.g. [law centres](#)²³ that simply do not have capacity to meet demand. The challenge of funding relevant to legal aid also exists when considering other supplementary options.

Finally, a further aspect the Inquiry might wish to explore is the co-location of supplementary advice services. Linking advice services to food banks or GP surgeries for example, could potentially lead to the provision of effective integrated and holistic assistance. This might also go some way to addressing concerns about lack of awareness of having a legal problem, as well as the escalation and clustering of legal (and non-legal) issues. Seeking out help on a health issue from a GP for example might reveal a related legal issue, resolution of which might improve health outcomes.

In fact law is increasingly recognised as a fundamental social determinant of health, shaping the daily lives and wellbeing of individuals and communities. Social welfare legal issues (such as problems with welfare benefits, debt, housing, employment and immigration) can directly harm health, with strong evidence of harm to mental health in particular^{24, 25}. Physical health can also be impacted through the consequences for living conditions, such as poor quality housing and inability to afford the necessities of daily life^{26, 27}. These social and economic challenges contribute to health inequalities, a policy issue which is important in the National Health Service. Access to legal advice can help address these issues, supporting individuals to secure their rights and improve their living conditions. Law is therefore both a

²³ Catherine Baski, 'Law Centres: Poor Relations, Law Society Gazette, 11 November 2024.

²⁴ Franklyn, R. *et al.* (2017) "Findings from the Legal Problem and Resolution Survey, 2014-15." Ministry of Justice.

²⁵ Balmer, N. (2013) "English and Welsh Civil and Social Justice Panel Survey: Wave 2." Legal Services Commission.

²⁶ Waterall, J., Newland, R. & Murphy, S. (2022) Understanding the impact of money on people's health and wellbeing. *British Journal of Nursing*, 2022, Vol 31, No 21 p1124-1125.

²⁷ Harker, L. (2006) "Chance of a lifetime: The impact of bad housing on children's lives." Shelter.

contributing factor in poor health and health inequalities, and also a crucial lever for improvement of public health²⁸.

Health Justice Partnerships (HJPs) are collaborations between health services and organisations specialising in welfare rights, integrating legal advice into healthcare settings to address the social determinants of health²⁹. Research shows that these partnerships have demonstrated benefits, including improved access to legal assistance (especially for more vulnerable populations, including those with mental health challenges and long-term health conditions), improved social and economic outcomes, better health and wellbeing, and reduced pressure on health services³⁰. They are therefore important for both health and access to justice goals. They are not consistently implemented, having no national policy or funding dedicated to this work, but exist in pockets of good practice. Further work needed to scale these partnerships includes developing more sustainable funding solutions, further robust evaluation to demonstrate impact, and training to support both health and legal professionals³¹. Overall, HJPs offer a promising approach to tackling health inequalities, but require strategic investment and policy support to maximise their potential.

Q3. What is the impact of those acting without legal advice and / or representation on access to justice?

The absence of legal advice and/or representation results in individuals being unable to effectively use the legal system, creating a 'justice gap,' where legal rights exist in theory but are hard to enforce in practice. The impact of acting without legal advice and representation can be viewed in two ways, individuals and systems.

Dr Natalie Byrom's "Where has my justice gone?" report sets out that the reduction in public funding for legal representation has led to reported increase in litigants representing themselves in the court and tribunal system.³² The report collates the available evidence of what appears to be a heightening problem, albeit one for which data is not consistently gathered, and demonstrates the various ways in which unrepresented litigants might struggle to engage in the justice system.

For individuals, extensive research³³ has revealed the extent of the population who experience justiciable problems but who do not identify these issues as having a legal component (and therefore do not seek legal help) or where they do, they are unable to access legal advice and assistance. Lack of recognition of these problems as legal issues

²⁸ Genn, H. (2019) "When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice," *Current Legal Problems*, 72(1), pp. 159–202. doi:10.1093/clp/cuz003.

²⁹ Beardon S, Genn H. (2018) *The Health Justice Landscape in England & Wales: Social welfare legal services in health settings*. UCL Centre for Access to Justice.

³⁰ Beardon S, Woodhead C, Cooper S, Ingram E, Raine R, Genn H. (2021) *International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review*. *Public Health Reviews*, 42:1603976.

³¹ Beardon, S. (2023) *The case for embedding welfare rights advisers throughout the NHS*. *Health Service Journal*.

³² Natalie Byrom, *Where has my justice gone?*, Nuffield Foundation, March 2024, p.38.

³³ For example, see, Genn, H. (1999). *Paths to justice: what people do and think about going to law*. Bloomsbury Publishing; Pleasence, P., & Balmer, N. J. (2014). *How people resolve 'legal' problems*. London: *Legal Services Board*.

leads to delays in resolution. As noted above in the response to Q2, this may impact upon health and well-being³⁴ (stress/anxiety alongside physical health) which may both compound existing issues³⁵ and add new ones. Early intervention is key, with timely support providing the means of identification of legal issues, together with the appropriate strategies for resolution. Vulnerable groups of people face the greatest barriers in accessing the legal system and unresolved legal issues can cause serious personal and societal harm.

The move towards digitalisation of the justice system might suggest increased access to justice without the need for legal advice and representation. Online services allow individuals to submit claims and access hearings remotely, aiming to reduce the administrative burden and in-person appearances. However, there is increasing evidence that a lack of understanding of legal processes and terminology coupled with issues of digital exclusion leads not to greater access, but impaired access which does not enable timely and fair resolution.³⁶ (see also the response to Q8 on technology).

Individuals without legal representation or advice find it difficult to navigate the required legal procedures³⁷. The complexity of court processes, the technical language used in law and the often-unwritten rules or logics of the legal system requirements can be highly challenging for litigants in person. The failure to understand evidence requirements and filing deadlines may impact upon the chance of achieving a fair and just outcome. Legal disputes bring emotional, social and financial pressures which can feel even heavier for those representing themselves, leading to feelings of intimidation, helplessness and creating trauma.³⁸ When one party has a lawyer and the other does not, the imbalance creates clear fairness concerns.

In terms of court systems, while some reforms (such as judicial training and simplified forms) have sought to assist litigants in person, their presence often leads to delays. Judges must spend additional time explaining procedures, and hearings may take longer due to difficulties understanding law or process. This not only increases costs but also adds to case backlogs, affecting the timely resolution of disputes and puts extra pressure on a court system that is already creaking under the weight of cases.

This inefficiency has knock on impact for access to justice and prevents members of the public from having their disputes resolved in a reasonable amount of time, which is an

³⁴ Genn, H (2019) When Law is Good for Your Health: Mitigating the social determinants of health through access to justice'. *Current Legal Problems*, 72(1): 159–202; Pleasence P, Balmer N. & Buck A (2008) The Health Cost of Civil-Law Problems: Further Evidence of Links Between Civil-Law Problems and Morbidity, and the Consequential Use of Health Services. *Journal of Empirical Legal Studies*, 5(2): 351-373

³⁵ Clements, L. J. (2020). *Clustered injustice and the level green*. Legal Action Group.

³⁶ Leader, K. (2024). *Litigants in Person in the Civil Justice System: In Their Own Words*. Bloomsbury Publishing; Mulcahy, L., & Tsalapatanis, A. (2022). Exclusion in the interests of inclusion: who should stay offline in the emerging world of online justice? *Journal of Social Welfare and Family Law*, 44(4), 455-476; Mulcahy, L., & Tsalapatanis, A. (2024). What Is Lost When Justice Moves Online? In *Digital Justice: Engineering Disadvantage?* (pp. 53-75). Cham: Springer Nature Switzerland.

³⁷ Do-it -yourself law: access to justice and the challenge of self-representation Sep 2013 *Civil Justice Quarterly* 32(4):411-444 (34 pages)

³⁸ Leader, K. (2024). *Litigants in Person in the Civil Justice System: In Their Own Words*. Bloomsbury Publishing; Leader, K. (2024). Conspiracy! Or, when bad things happen to good litigants in person. *Legal Studies*, 44(3), 498-518.

important component of the right to a fair trial. In particular, there are currently significant delays in the Family Court,³⁹ County Court⁴⁰, Crown Court⁴¹ and Employment Tribunal.⁴²

There are also principle-based considerations to consider about the form and functionality of an adversarial system where a judge is no longer a passive arbiter⁴³ but is more actively engaged in a case where the litigant is unrepresented. If the legal system is one that an individual may have difficulty navigating alone, the basis on which it is considered sufficient for that person to benefit from additional assistance from a judge - particularly when their opponent is legally represented- needs to be clearly determined. This is because it raises fairness concerns for litigants on both sides and potentially impacts the appearance and reality of accessing justice. Equality of arms concerns arise for the litigant in person and the litigant who is represented (and potentially paying for this privately) may see lack of fairness in their lawyer (or the judge) spending time with the unrepresented party to explain process or issues so that a listed hearing can be effective and delay minimised or avoided. The need for legal advice and support for the unrepresented party remains but is absorbed by other legal actors in the adversarial process.

A properly resourced Legal Aid system would significantly reduce the number of unrepresented litigants and would help ensure access to justice not just for them, but for other users of the court system whose access to justice is being impinged by unreasonable delays.

Q4. 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.

As set out in other responses to this consultation, it is clear that access to justice will continue to be significantly impacted unless and until such time as there is significant investment in a robust system of legal aid, which is sustainable, accessible and adequately remunerated. This response focuses on other funding options whilst acknowledging that other potential funding options cannot wholly replace legal aid.

Public policy has at least since the 1990s operated consistently with the aim of reducing the amount of financial assistance for individuals to enable them to obtain legal advice and representation. The aims of the Rushcliffe Committee of 1945 to produce a '*comprehensive and ambitious*'⁴⁴ public legal aid and assistance support scheme, which was given effect by

³⁹ Committee of Public Accounts, Improving family court services for children, Forty-Fifth Report of Session 2024–25: <https://publications.parliament.uk/pa/cm5901/cmselect/cmpubacc/883/report.html#heading-2>

⁴⁰ Justice Committee, Work of the County Court, Fourth Report of Session 2024–25, 21 July 2025: <https://publications.parliament.uk/pa/cm5901/cmselect/cmjust/677/report.html#heading-3>

⁴¹ The Law Society, "Court waiting times undermine justice", 26 June 2025: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/court-waiting-times-undermine-justice>

⁴² The Law Society, "Employment tribunal backlog continues to spiral", 20 June 2025: <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/employment-tribunal-backlog-continues-to-spiral>

⁴³ Moorhead, R. (2007). The Passive Arbiter: Litigants in Person and the Challenge To Neutrality. *Social & Legal Studies*, 16(3), 405-424.

⁴⁴ Elson, *The Rushcliffe Report*, (1946) U Chi Law Rev (13) (2) 131 at 142; Report of the Committee on Legal Aid and Legal Advice in England and Wales (Cmd. 6641) (HMSO).

the Legal Aid and Advice Act 1949 have long since been denuded to the point of redundancy. What has replaced the commitment to publicly funded civil legal aid is a patchwork of private sector funding mechanisms, e.g., conditional fee agreements (CFAs); damages-based fee agreements (DBAs); third party litigation funding; crowd funding; altruistic funding (sometimes referred to as pure funding); and, legal expenses insurance. Additionally, there have been several attempts to devise, but not implement, contingency legal aid and supplementary legal aid schemes (CLAFs and SLASs). Additionally, pro bono legal advice and assistance is provided by, amongst others, the legal profession and universities.⁴⁵ A summary of the various mechanisms and their utility has recently been conducted in the context of consideration of third party litigation funding by the Civil Justice Council, which the Committee may wish to consider as part of its Inquiry.⁴⁶ The Report sets out a clear outline of the ways in which the full range of private funding options can be properly used, and in the case of third party litigation funding regulated, so as to promote effective access to justice through the use of private sector mechanisms.

The starting point for considering the use and development of potential funding options that could be developed without having an impact on the public purse would be the development of a comprehensive private funding strategy. Where necessary that strategy should be supported through legislation. Such a strategy should provide the framework for the development of private funding so that it can, in an holistic way, secure legal advice and assistance for individuals who seek to: i) minimise the possibility that they will find themselves in legal disputes, i.e., it should make provision for legal health promotion or preventive justice (see further the response to Question 8); ii) make provision for access to means by which individuals can resolve their disputes consensually, i.e., consensual justice; and, iii) provide for access to the civil courts (including tribunals) to enable individuals, where necessary, to vindicate their rights through court judgment, i.e., adjudicative justice. The aim, which ought to be deliberately ambitious, should be to go further than that which the Rushcliffe Committee recommended and which resulted with approximately 80% of the population having access to legal aid in the 1950s.⁴⁷

Any such strategy should look to incorporate and promote the range of existing private sector funding mechanisms and should consider how to do so in a properly targeted way. It should be targeted as not all private mechanisms will be capable of funding all types of litigation. For instance, the use of CFA funding is unlikely to be able to provide a means to fund collective or mass litigation due to the significant capital outlay that such litigation incurs. It may also be unsuitable for disputes which are very urgent or where damages are unlikely to be awarded.

Such a strategy should also ensure that the development and promotion of such funding mechanisms is effective. One of the longstanding flaws in the development of DBAs is that the Regulations that govern their operation were so poorly drafted by the Government that they have failed to be used by the legal profession. That problem has been further compounded by repeated failures by successive Governments to remedy the problem.⁴⁸ To

⁴⁵ See, for instance, the UCL Centre for Access to Justice <<https://www.ucl.ac.uk/access-to-justice>> or the clinics available through Lawworks <http://lawworks.org.uk/legal-advice-individuals>

⁴⁶ Civil Justice Council, *Review of Litigation Funding – Final Report* (June 2025), which is available at: <https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf>.

⁴⁷ See Hynes & Robins, *The Justice Gap*, (LAG, 2009) at 21.

⁴⁸ CJC Report (2025) at 116 and following.

ensure that DBAs, as well as other forms of private funding, are best able to support the provision of legal advice and representation, steps will need to be taken to ensure they are capable of operating as effectively as possible. Equally, where it is apparent that they are not operating as intended remedial action should be capable of being taken, and should be taken, expeditiously.

One particular area that the Inquiry may wish to consider is the extent to which, as the CJC Report notes, legal expenses insurance (LEI) could be promoted.⁴⁹ LEI is widely used as a means to provide funding for legal advice and assistance in many countries. It is too, however, largely underdeveloped here even though many individuals have access to it through their motor insurance or household insurance policies. Many individuals in receipt of such insurance are unaware of the fact that they have it or otherwise do not use it. As a form of private funding, the expansion of LEI was considered both by the Jackson Costs Review in 2009, which considered the case for mandatory LEI and recommended steps be taken to increase promotion and use of it through home insurance policies and by the CJC.⁵⁰ There remains a case for considering what steps Government can take to promote the take-up and use of LEI. Such steps could include working with the insurance industry to develop and promote LEI policies, which could be made available to employees by their employers and which could be a tax deductible benefit. Such work could also include the development, as part of such policies, access to a wide range of means to provide legal advice to promote preventive justice and to promote consensual means of dispute resolution, as well as the provision of advice and representation for legal action in the courts and tribunals. While LEI is unlikely to be suitable as a means to provide funding for all types of legal issue or dispute, e.g., it is understood to be unsuitable as a means to funding collective or mass litigation, its expansion could properly be targeted at, for instance, personal injury, product liability, contractual, employment, debt and housing disputes. There will remain some legal issues that are unsuitable for LEI and for which a robust legal aid system is essential to ensure the most vulnerable are not left without access to justice.

An Access to Justice Levy could, in principle, also form a proper part of a private sector strategy. At the present time there is a form of such levy in place already. That is the requirement for unallocated damages that arise from a judgment in collective proceedings that take place in the Competition Appeal Tribunal to be paid to the Access to Justice Foundation (AJTF), a charity that aims to promote access to justice through funding advice centres etc.⁵¹ Lawyers acting on a pro bono basis can also seek pro bono costs orders to raise funds for the AJTF. Further suggestions for such a levy include: proposals to require a percentage of lawyers' profits to be paid into such a fund. This was to be collected via a levy on earnings above a certain threshold. In other words, it could, for instance, operate as an hypothecated form of taxation to be paid by the legal profession in addition to their general obligation to pay tax. It could also be funded via a levy on court fees;⁵² and the CJC's proposal to create such

⁴⁹ CJC Report (2025) at 125 and following.

⁵⁰ CJC Report (2025) at 126-127.

⁵¹ See Competition Act 1998, s.47C(5); details of the Foundation are available here: <https://atjf.org.uk>.

⁵² The creation of such a levy has been variously suggested since the 1990s. The last such proposal was that suggested by Michael Gove MP, during his period of office as Lord Chancellor. It was not well-received at the time, on which see G. Bindman, *Mr Gove and the Legal Levy Proposal*, (openDemocracy, 16 February 2016), which is available at: <https://www.opendemocracy.net/en/opendemocracyuk/mr-gove-and-legal-levy-proposal/>. Also see R. Smith & N. Madge, *Towards a National Legal Service*, which is available at: <https://www.societyoflabourlawyers.org.uk/wp-content/uploads/SLL-Towards-a-National-Legal-Service.pdf> and

an Access to Justice fund, to pay for pre-action legal advice and assistance and to promote consensual settlement. This was to be paid solely out of profits made by lawyers and third party litigation funders from profits they obtained from the provision of CFA and DBA funding and litigation funding, respectively.⁵³

In terms of a levy on lawyers' income as a means to secure funds for a levy, the Inquiry will need to consider what is the principled basis for imposing an additional, hypothecated form of taxation on the legal profession. It could, for instance, be argued that such a levy is justified by the fact of membership of the legal profession, and the benefits that come from that. More practically, the Inquiry will need to consider how such a form of taxation could in practice be calculated and collected, what incentives and means to lawfully avoid or minimise payments due under it could arise and what effect they may have on the potential amount raised, and what effect it may have on the cost of the provision of legal services to those who pay for it. It might well, for instance, be expected that the cost of legal services could increase in the light of the levy being charged, which would have an adverse impact on those paying for such services and may, then, adversely effect their ability to secure effective access to justice.

Given this it may well be more appropriate to consider securing the funds for an Access to Justice Levy from, as the CJC considered, requiring payment of a small percentage of lawyers' profits that are specifically derived from their profit from CFA or DBA funded litigation, as well as such profits obtained by third party litigation funders. In such instances, the funds are obtained directly from profits specifically obtained from lawyers and funders, rather than the legal profession as a whole. They are also obtained directly from sums of money that can only result in profits due to lawyers and funders being specifically permitted by the State to engage in such litigation funding practices: such a levy could thus be said to be a specific incident of the ability to make this particular type of profit from litigation. Again, it would have a more specific focus than that of a form of taxation imposed on the legal profession generally. However such a levy is recommended, it ought however, as noted above, to form part of an overall, comprehensive private-funding strategy.

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

For many people who are seeking access to justice, the principal issue is finding a lawyer who can take on their case.⁵⁴ As outlined above, the 'Legal Aid Census' conducted in 2021 identified systemic underfunding as the primary challenge facing the legal aid sector.⁵⁵ Low salaries and high workloads make publicly funded work significantly less attractive for qualified lawyers. Difficulties recruiting and retaining staff impacts whether firms continue to provide legally aided advice.⁵⁶

The ability of firms to recruit and retain staff (and by extension, train and retain expertise in areas of unmet legal need) will only be achievable if firms can offer vaguely competitive salaries. This requires increased legal aid rates. While this is not an issue that can be

<https://www.lag.org.uk/document-downloads/213950/the-national-legal-service-a-new-vision-for-access-to-civil-justice-roger-smith-and-nic-madge>. Smith & Madge argue for both a levy on lawyers' profits and on court fees.

⁵³ CJC Report (2025) at 128.

⁵⁴ Review of Civil Legal Aid Summary Report, Ministry of Justice (2025), p8

⁵⁵ 'We are legal aid: Findings from the Legal Aid Census 2021', Denvir et al (2022), p76

⁵⁶ Review of Civil Legal Aid Summary Report, Ministry of Justice (2025), p102

resolved with limited funds, it is nonetheless a necessary step that government must consider.

Significantly less money is required to support firms that are training new lawyers in areas of social welfare law. Recruitment of new lawyers into the sector has previously been supported through government funding. Between 2002 and 2010, the Legal Services Commission ran a scheme to fund training contracts for firms who carried out at least 50% of their work under legal aid. Over eight years, 750 new trainees qualified into legal aid firms. The scheme was scrapped in 2010, saving the Ministry of Justice only £2.6 million. Justifying the decision to end the scheme, the MOJ stated at the time that there were ‘too many lawyers chasing too little work’,⁵⁷ a statement at odds with the current moment.

Two charitably funded schemes have sprung up in the space left by the withdrawal of the LSC’s training grants. The Justice First Fellowship was created by the Legal Education Foundation in 2015. 125 fellows have qualified in that time, with three quarters continuing to ‘use the law for social change’. The LEF cover the full cost of employing a fellow for two years as well as the cost of SQE2. The Social Welfare Solicitor Qualification Fund was created in 2021 and pays for successful applicants to sit both SQE parts and undertake the preparation course. In 2023, £1 million was raised from 30 City firms, allowing 98 individuals from across England and Wales to benefit from the fund⁵⁸.

In 2021, the Scottish Government introduced a legal aid trainee fund for firms carrying out criminal defence work. The scheme supported one cohort of 40 trainees before ending in March 2025. The fund cost £1 million a year, covering 50% of the trainee’s salary, regulatory costs, and CPD.

These schemes are inexpensive. They can allocate funding so that parts of the country with the highest levels of unmet legal need benefit the most. And they have the potential to give significant cohorts of young lawyers the experience and skills necessary to work in social welfare law. Although they do not avoid the underlying issues with staff retention, the re-introduction of training grants would at least ameliorate the attrition of senior lawyers in the sector. In our experience working with law students, there is a significant appetite to enter this sector, however the lack of available positions in addition to shouldering the additional cost of the SQE exams and training course can make entrance into the profession unobtainable. International students are also significantly hindered from entering the profession due to most legal aid firms not being visa sponsors (presumably due to the cost and additional administration involved) – again addressing this could broaden the number of entrants into the sector.

The government’s recent decision to restrict level 7 apprenticeships to those under 21⁵⁹ also closes out another route into entry to the profession for those who may come to the profession later in life or for university graduates who could previously then enter the apprenticeship route and be supported to study whilst working. As a university clinic, this is an avenue to qualification into social welfare law that we were seeking to set up at the time of the announcement and we imagine other services were also exploring this. When

⁵⁷ <https://www.lawgazette.co.uk/news/moj-axes-training-grants-for-legal-aid-/56225.article>

⁵⁸ <https://cils.org/initiatives/swsqf.html>

⁵⁹ <https://www.thelawyer.com/deeply-disappointing-solicitor-apprenticeship-shake-up-divides-opinion/>

considering the importance of promoting social mobility in the profession, this restriction is somewhat short-sighted.

Finally, there are broader implications to limiting social mobility within the legal aid profession. Its low salaries risk it becoming a profession that is only viable to those who have financial support from other sources which in turn impacts the diversity of those who enter the judiciary. Ultimately trust in the legal system is eroded if its legal actors do not reflect the lay people that the system seeks to serve.

Q5. How are the legal services regulators responding to their obligation to improve access to justice under the Legal Services Act 2007?

The nature of the obligation

Before responding to the substance of the question, it is important to be clear about the nature of the underlying obligation. It arises from the regulatory objective in section 1(1)(c) of the Legal Services Act 2007 that relates to “improving access to justice”. This only applies to England & Wales.

The Legal Services Board (LSB) and ‘approved regulators’ must, *so far as is reasonably practicable*, act in a way that is both compatible with the regulatory objectives and considered by them to be *most appropriate* for the purposes of meeting those objectives (sections 3(2) and 28(2)). The obligation is not, therefore, absolute.

In acting, the LSB and the approved regulators must also have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and to any other principle appearing to them to represent best regulatory practice (sections 3(3) and 28(3)). Equally, therefore, the obligation is not to do everything they possible could.

The scope of ‘access to justice’

The expression ‘access to justice’ is not defined by the Act. It is therefore open to both very narrow and extremely wide interpretations: combined with the ‘reasonably practicable’ and ‘most appropriate’ requirements on regulators, there is accordingly great scope for legal services regulators to justify taking a wide range of possible action (and, indeed, when taking a narrow view, no action at all).

The LSB’s view⁶⁰ is that ‘access to justice’ means the “ability to seek and obtain a fair resolution to legal problems”. By focusing on ‘resolution’, this view is arguably more towards the narrow end of the spectrum of meaning. However, it would not be restricted to access to courts and judicial determination, but could incorporate, for instance, both alternative and online resolution. Nevertheless, it does seem to be founded on a sense of disappointment (if not dispute) with one or more other parties – hence the need for a ‘resolution’.

⁶⁰. See <https://legalservicesboard.org.uk/wp-content/uploads/2024/07/05.-Paper-24-36-Access-to-Justice-July-Board-Paper.pdf>. For a broader discussion of the scope of the regulatory objective, see Legal Services Institute discussion paper available at: <https://stephenmayson.com/wp-content/uploads/2013/08/mayson-marley-dunn-2012-access-to-justice.pdf>.

However, the LSB view does not approach the broadest interpretation of access that could extend to *any* access to legal advice or information (whether from lawyers or not, human beings or not, and whether regulated or not). Even so, the LSB view would no doubt need to incorporate some associated or consequential matters – including access to legal advice: without that advice, it is quite likely that the underlying legal need would then become an unmet legal need. The LSB is concerned about unmet legal needs and takes the legitimate view that the existence of such need represents a potential denial of access to justice⁶¹.

The LSB view also assumes some prior issues. The reference to the resolution of a ‘legal problem’ necessarily requires that the person with the problem recognises that they have a *legal* problem: this is a question of legal capability and assumes that the person has (or is advised by someone so that they have) an understanding of their legal rights and duties.⁶² Without such understanding and capability, a person is not likely to seek a resolution of their problem and so not pursue ‘access to justice’.

The nature of ‘improvement’

As with the core concept of access to justice, the 2007 Act contains no definition or benchmark by which to assess whether or not it has been ‘improved’. There is never likely to be one measure or assessment that captures improvement or deterioration.⁶³ A range of metrics might then suggest themselves as a series of proxies for improvement, such as:⁶⁴

- (a) *increasing demand for legal services*: e.g., turnover of law firms (though this could also be a reflection of rising prices rather than, or as well as, increased demand); court statistics showing a rising number of claims or cases;
- (b) *fewer instances of unmet legal need*; e.g., survey data from legal needs surveys (see, for example, the [LSB Individual Legal Needs Survey](#));
- (c) *more available ‘paths’ to justice*: e.g., support for self-help or self-representation; an increase in the number of providers (practitioners or firms) and/or locations; increasing use of technological avenues for information, help or support; increase in the number of advice centres or cases handled by them;
- (d) *better perception or satisfaction* by the public and consumers of accessibility to, and response by, providers of legal information and advice;
- (e) *increase in pro bono provision* by practitioners; and

⁶¹ Genn, Hazel; (2025) Let’s not talk about Access to Justice: Unravelling the concept to create meaning in the non-legal world. [Lecture]. Presented at: The Neill Law Lecture 2025, Oxford, UK
<https://discovery.ucl.ac.uk/id/eprint/10207393/>

⁶² It is important here to remember that “increasing public understanding of the citizen’s legal rights and duties” is a *separate* regulatory objective in section 1(1)(g) of the Legal Services Act 2007. There is thus a clear interaction between different obligations on regulators, but in assessing regulators’ performance on access to justice, we should not conflate the two regulatory objectives so as to include one (citizens’ understanding) within another (access to justice).

⁶³ One possible source might be the World Justice Project Rule of Law Index (available at: <https://worldjusticeproject.org/rule-of-law-index/>) which, in section 7.1, ranks the UK on measures of the accessibility and affordability of civil courts, including whether people are aware of available remedies, can access and afford legal advice and representation, and can access the court system without incurring unreasonable fees, encountering unreasonable procedural hurdles, or experiencing physical or linguistic barriers. On this measure, the UK has fallen from the top third of countries in 2015 (31st of 102 countries) to close to the bottom of the middle third in 2023 (91st of 142 countries). However, this measure is for the UK as a whole and not just England & Wales; it also takes account of a range of factors, influences and actors and is not therefore limited (as the regulatory objective is) to the legal services regulators.

⁶⁴ For an early discussion (2012) of this issue by the LSB, see <https://legalservicesboard.org.uk/wp-content/media/Evaluation-measuring-A2J-11-09-12-Discussion-paper-FINAL-FORMATED.pdf>.

- (f) *lower cost of legal services* (measured, say, by average cost of certain types of legal work).

However, in using any of these metrics as a basis for assessing the impact of legal services regulators in discharging their obligation in relation to the regulatory objective, it would also be very important to assess what degree of influence and intention the regulator had been able to exercise over the factors that led to the outcome(s) recorded by the measure in question. In fact, other than encouragement to law firms and other relevant organisations to record the necessary data and then make it available, it is difficult to see that the LSB or approved regulators could have any direct influence over (or, therefore, responsibility for) *any* of the outcome measures listed above. It will always be challenging to establish any causal link between *regulators'* actions and any measures of improvement. Ultimately, this might lead us to question the wisdom, purpose and value of the regulatory objective itself.⁶⁵

The Legal Services Board

Other than its general exhortations (and statutory guidance⁶⁶) to the approved regulators to fulfil their obligation under the regulatory objective, the LSB has kept its principal focus on two aspects of access to justice: technology and innovation; and unmet legal need.

Like the approved regulators and many commentators, the LSB has a firm belief that increased investment in and adoption of lawtech and innovation will improve access to justice. While we understand this belief (whilst bearing in mind the risks of digital exclusion), the difficulty in a regulatory context is that the realisation of benefits and opportunities from technology and innovation is something that any business or practitioner must consciously and voluntarily seek as a consequence of strategic and commercial calculation, including their own assessment of cost, risk and intended value. It should not be part of the mission of a regulator to cajole or encourage its regulated community to undertake such risks because it sees the potential for other, broader benefits.

These benefits and opportunities should certainly not be inhibited by unnecessary or inappropriate regulation. However, there is a world of difference between, on the one hand, ensuring that regulation and regulators do not unnecessarily stand in the way of innovation and technological development and, on the other, actively encouraging and promoting their uptake. The first would derive from taking targeted, risk-based and proportionate action to remove regulatory barriers and requirements where the public interest so directs; the second is an attempt to 'shape' the sector in a way in which market actors might not otherwise freely choose.

When the powers of regulators are derived from legislation that is partly penal (things that may not be undertaken unless prior approval is given, such as carrying on reserved legal activities) and partly permissive (things that may be done when approval has been given,

⁶⁵. On this, see Mayson (2020) 'Reforming Legal Services: Regulation Beyond the Echo Chambers', at paragraph 4.2.2; Independent Review of Legal Services Regulation Final Report, UCL Centre for Ethics & Law, available at: <https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation>.

⁶⁶. See <https://legalservicesboard.org.uk/wp-content/uploads/2024/04/Technology-and-innovation-guidance-for-publication.pdf>.

such as operating an alternative business structure), it might be questioned whether ‘missionary shaping’ of the sector is consistent with the expectations of section 28 (above). There are three other consequences of promoting technology and innovation in the pursuit of improved access to justice that are worth considering. The first is that, still, there are members of the population who are excluded from participating digitally, whether by choice or by circumstance. These members of society are then likely to be adversely affected and excluded from legal participation in any push for legal services to be delivered by or through technology.

The second consequence is that many of the legal services that can be delivered digitally are not reserved legal activities. To the extent that innovation and technological development encourage (as they arguably should) more new entrants, the likelihood is that these innovative and technological providers will not be legally qualified or authorised.⁶⁷ As such, their delivery of non-reserved legal activities in innovative and technological ways cannot then be regulated under the Legal Services Act through the supervision of the LSB or by any other approved regulators.

The third consequence arises from the risks of technological development that is founded on, or incorporates, elements of artificial intelligence (AI). Some of these risks are not unique to the legal services sector, but many of those risks are still emergent, and not yet fully understood. As a result, therefore, there is also not yet a comprehensive approach to the regulation of AI’s use and consequences. In turn, this exacerbates some of the more general concerns expressed above in relation to the emergence of unregulated *and unregulatable* legal services. While it might appear to increase access to justice, if it does, it will do so with some additional risks for consumers, such that the risk-benefit analysis by regulators will need to be properly informed, sophisticated and thorough.

Actively encouraging technological and other innovation is, knowingly, to increase the risk to vulnerable consumers who cannot access regulated services and practitioners and therefore to expose them to the potential harm caused by unregulated providers. While, on the one hand, this might be argued to have increased ‘access to justice’ (though only in the widest sense), it does so at no inconsiderable risk of harm to those who, on the other hand, are most likely to need the benefits of consumer protection and redress.

In relation to unmet legal need, there is also little that regulators can do directly, apart from encouraging the provision of advice and representation on a pro bono basis by regulated practitioners and the advice sector, combined with public legal education (though, as noted above, the latter should properly be regarded in the context of a different regulatory objective).

Nevertheless, in assessing the effectiveness of the legal services sector as a whole, the LSB does, for example, commission regular independent surveys of the legal needs of individuals, how those needs might be changing over time, and of the extent to which they

⁶⁷. LSB research shows that non-traditional firms are more likely to adopt innovative and technological options for the delivery of their services: <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf>.

are being met or remain unmet.⁶⁸ These surveys provide helpful periodic snapshots and insights into aspects of access to justice.

Solicitors Regulation Authority

As by far the largest front-line regulator of legal services in England & Wales, the activities of the Solicitors Regulation Authority (SRA) are likely to have the greatest impact on access to justice outcomes in the sector. Like the LSB (above), the SRA's work on innovation and technology runs the same risks of increasing digital exclusion as well as consequentially encouraging unregulated providers to be active in the sector. However, as an active front-line regulator, it has arguably done more than any other to encourage the adoption of technology and innovation.

For example, the SRA has created SRA Innovate and championed the use of a regulatory sandbox, and has also made use of grants from the Government's Regulators' Pioneer Fund. In one project, it used the funding to understand and map legal provision in the west of England and in south Wales with a view to exploring where key gaps in access to justice existed and how technology might be able to help address these. In a second project, it explored how online dispute resolution (ODR) could help tackle the unmet legal needs of individuals, consumers and small businesses.

As with the LSB, there might be questions to raise about whether it is appropriate for SRA resources funded by the practising certificates of regulated market participants to be used (even when supplemented by third-party grants) to explore solutions then developed and adopted by competing unregulated or new-entrant providers.

Other considerations: harmful consequences

Finally, though some initiatives are actively encouraged to spur the adoption of innovation and technology in the hope and expectation that they will improve access to justice, there is some contrary evidence that the regulators (and the SRA in particular) take their 'eye off the ball' in identifying and then dealing with the negative or harmful consequences of their encouragement or acquiescence. For example, one could take the view that high-volume consumer claims firms, operating on a 'no-win, no-fee' basis, offer a route to access to justice for clients who could not otherwise afford to pursue their legal rights. Such funding arrangements, often accompanied by after-the-event (ATE) insurance policies, are seemingly attractive. However, it was not until SSB Law collapsed that the SRA was prompted to undertake a serious examination of the practices adopted by such firms.⁶⁹

⁶⁸. See the 2024 individual legal needs survey data at: <https://legalservicesboard.org.uk/2024-ilns-dashboard>.

⁶⁹. See the August 2025 SRA thematic review of high-volume consumer claims (available at: <https://www.sra.org.uk/sra/research-publications/high-volume-consumer-claims-thematic-review/>). This review demonstrated – unfortunately, when significant harm had already been suffered by clients – several concerns about failures in regulatory compliance, including: failures to fully consider clients' best interests regarding litigation funding agreements and referral arrangements, and a lack of due diligence when entering into new arrangements; failure to give clients the best possible information about the costs of their matter, how the matter will be funded, and the options available to them; poor compliance with regulatory obligations when arranging ATE insurance for clients; weak systems to check that any referrer is working in a way that is consistent with the firm's regulatory obligations; inadequate client onboarding processes, including checks on client ID, sanctions and conflicts of interest; and inadequate advice to clients about their claim's merits and prospects of success.

In addition to ATE insurance and some forms of third-party litigation funding, litigation loans can be another particular cause for regulatory concern (though apparently not actively pursued by the SRA). Loans are a different form of funding, since there is an expectation on the part of the lender that the principal will be repaid (usually out of damages or other proceeds of the action or transaction for which legal advice and representation is financed), and that interest will be paid on the loan, too. As with other forms of funding, litigation loans might be thought to improve access to justice by providing the financial means for a citizen to vindicate or defend their legal rights: this is especially the case in family proceedings, where the parties' resources might be limited or tied up in assets that are not easily realisable in order to pay legal fees (such as the family home or pension savings).

Again, any lawyer involved would no doubt argue that the availability of loan funding is crucial to securing their client's access to justice – and, indeed, that it is in their client's best interests that the lawyer should facilitate it. But now suppose that the lawyer receives an undisclosed referral fee for introducing the client to the lender for the setting up of the loan; that the rate of interest is disproportionately high; that the loan is secured on joint property (so potentially reducing its value – and possibly even without the knowledge or consent of the other party)?⁷⁰ The lawyer might now be hard-pressed to claim that the conditions surrounding such a loan were in the best interests of the client. However, these conditions rarely make it to the radar of interest or concern of the relevant legal and financial services regulators.

Conclusion

The pursuit of the regulatory objective by regulators to improve access to justice presents a mixed picture. In the first place, the meaning and scope of the objective is not clear and is open to wide interpretation. In any event, the obligation created by it is not absolute but is still dependent on the judgement of regulators. Nor is it ever going to be easy to attribute cause and effect between regulators' actions and access to justice outcomes (for which, again, there are no agreed measures and no benchmark by which improvement can be assessed).

There may also be a fundamental question about the appropriateness of the regulatory objective being applied to legal services regulators in circumstances that might be regarded as unclear or 'set up to fail'.

There is evidence that regulators have taken steps that they believe are designed or intended to improve access to justice. However, there are also questions about whether some of these initiatives are themselves appropriate for regulators to take when the funding of them comes from regulated practitioners who operate in a competitive market and often then benefit those who are new market entrants and not regulated.

Finally, there is some evidence that initiatives that appear to improve access to justice might nevertheless have detrimental consequences in terms of increased digital exclusion, increased activity by unregulated providers who cannot be sanctioned if they cause harm to consumers, and non-compliant conduct by practitioners who are either acting more in their

⁷⁰. The author is aware of a case in which all of these questions would be answered in the affirmative.

own self-interest or in ways that could not properly be described as being in their clients' best interests or, indeed, in the public interest more widely.

Q6. How is pro bono work and free legal advice being used to support access to justice and what reliance is placed on it?

Within the current legal aid context (as noted above), pro bono has played a significant role in supporting access to justice, but its limitations mean such reliance is unlikely to be sustainable.

The [Pro Bono Protocol for Legal Work](#), developed by LawWorks, to promote and support high standards of pro bono work describes pro bono legal work as “legal advice or representation provided by lawyers in the public interest including to individuals, charities and community groups who cannot afford to pay for that advice or representation and where public and alternative means of funding are not available.” Such work is only free to the client when the lawyer or law firm provide legal work voluntarily and do not receive payment.

While the data in the [LawWorks Clinics Network annual report](#)⁷¹ cannot be said to reflect the full extent of unmet legal need, it does give some indication. Clinics in their network received 90,551 enquiries in 2024 and 61,956 individuals were provided with legal advice, information or referral. Other key figures to note are that the 116 clinics in Greater London account for just over a third of the 313 total number of network clinics and that over 50% are based in university law schools.

The [Protocol](#) also highlights at para 1.3 that “Pro Bono Legal Work is always only an adjunct to, and not a substitute for, a proper system of publicly funded legal services”. There are both practical implications and rule of law arguments on the extent to which pro bono can or should be relied on as a method of legal services provision. On a practical level, the funding, staffing and volunteering at such organisations is variable and patchy including areas of law covered, the amount of legal help given (often being limited to one off legal advice) and geographical location. University clinics need to navigate the tension of seeking to meet community needs while also providing an educational experience that meets student expectations,⁷² with many law school clinics closed out of term time removing that option of free legal advice.

More broadly, individuals need to be able to realise rights and enforce obligations that the state creates, otherwise those rights and obligations become meaningless and risks the erosion of public trust in law and the legal system. Aside from the practical issues identified above, a clear principled basis for such heavy reliance on pro bono work needs to be clearly articulated and evaluated if it is to continue to play a key role in the access to justice landscape. In the lead up to LASPO, Conservative Ministers [suggested](#)⁷³ that lawyers who benefit financially from the legal system should help protect access to justice for all through

⁷¹ LawWorks Clinics Network Report, Analysis of clinic activity between January 2024 – December 2024 June 2025.

⁷² See for example Drummond, Orla and McKeever, Gráinne, [Access to Justice through University Law Clinics](#), Ulster University, (2016).

⁷³ Afua Hirsh, 'Legal Aid delivers justice, kind lawyers won't', The Guardian, 13 October 2010.

offering their services for free. This was echoed head in 2015 by Conservative Minister, [Michael Gove](#)⁷⁴, suggesting that “those who have benefited financially from our legal culture need to invest in its roots” (although it was not clear what precise form this should take) and later in 2021 Labour’s David Lammy put forward [policy plans](#)⁷⁵ that “would require City firms to have met the target of at least 35 hours of pro bono legal services per lawyer per year to be eligible for government contracts.” However, other professionals and organisations also benefit financially from the legal system to a significant extent as does the state itself, so it is not clear why lawyers and law firms should be required to give their time for free in contrast to other professions where there are also gaps in the provision of services (for example health and education).

As it stands, many lawyers do give their time to pro bono activities, including those at large city law firms their through corporate responsibility programmes. The [pro bono recognition list](#) recognises those who have given 25 hours or more pro bono legal assistance over the year and the [LawWorks Pro Bono Awards](#) celebrate the legal pro bono activities undertaken by organisations and individuals. However, it is suggested that there is insufficient capacity, strategy or resource for pro bono activity to meet current unmet legal need. It is suggested that while pro bono might potentially be used to fill small access to justice gaps, it is not sustainable for it to continue to fill the huge gap that exists when the legal aid sector itself is also facing significant sustainability issues⁷⁶.

It is also important to note that even if pro bono legal assistance were more widely available, it cannot replace the expertise and training that specialist legal aid lawyers have. Pro bono from non-specialist lawyers cannot replace the expertise of a lawyer undertaking that work on a daily basis. Whilst some of the same tools of the trade may be the same, the expertise is different and equally specialist. Furthermore, advice alone cannot substitute representation and casework from beginning to the end of a case where it is needed.

Further work on the economic case for reform more generally would be useful. [‘The value of justice for all’](#) report⁷⁷, commissioned by the Access to Justice Foundation in partnership with the Bar Council, found that the funding of early free legal advice and support at an average cost of £3,300 per case saved the government £9,100 in 2023. This means that for every £1 the Treasury spent on legal advice, it saves the public purse £2.71. The report indicates that the Treasury could save up to £12 billion over the next ten years by investing in the provision of specialist free legal advice. It is suggested that further examination of the cost implications of any reform options includes the impact on other state budgets, such as for welfare benefits, local authorities, and the national health service so to avoid a supposed saving to effectively be costing the state more elsewhere.

⁷⁴ Owen Boycott, ‘Lawyers’ levy? Michael Gove threatens to make rich law firms pay for legal aid, The Guardian, 23 June 2015.

⁷⁵ John Hyde, ‘Labour tells firms to meet pro bono target or lose government contracts’, The Law Society Gazette, 28 September 2021.

⁷⁶ [Inquiry into the sustainability and recovery of the sector](#), Westminster Commission on Legal Aid, APPG, October 2021.

⁷⁷ Rebecca Munro and Lorna Preece, ‘The value of justice for all’, A report for The Access to Justice Foundation and The Bar Council, August 2024.

Q7. How can advice, legal support or non-court dispute resolution, such as mediation and restorative justice, help the early resolution of disputes?

The starting point for the early resolution of disputes is to help minimise the prospect that they will arise in the first instance. In countries, such as the USA, there have been distinct developments of what is generally known there as preventive law, comprehensive law or problem solving lawyering.⁷⁸ The essence of this approach is to help individuals and businesses to identify where and how disputes arose so that they can take active steps to avoid them arising in the future: prevention being better than cure. In England and Wales, this type of approach, which was initially promoted by the Government in a White Paper of 2000 – *civiljustice.2000* –⁷⁹ and more recently discussed by Susskind has been referred to as ‘legal health promotion’ or, as the Lady Justice Chief put in in 2024, preventive justice.⁸⁰

If England and Wales intends to promote effective access to justice it ought to properly consider how to develop and promote such legal health promotion or preventive justice. It ought to be self-evident that if individuals and businesses can avoid disputes arising in the first instance they will avoid the cost, time and trouble of seeking to resolve them once they have arisen. They will, particularly, avoid having to divert their resources from their everyday socio-economic activities to dispute resolution, whether that is early, consensual resolution or litigation. Serious consideration should be given to developing the provision of advice and assistance to individuals across the country through accessible mediums. To some extent such mediums will, inevitably, be digital, e.g., through the development of accurate and reliable generative AI. Alternatively, they will be provided through existing and, it is to be hoped, revitalised legal advice sector and improved provision not just of legal education generally, but specific advice to individuals and businesses on issues that are likely to create for them the possibility of future disputes so as to avoid them effectively. More importantly, however, to more fully insure against the fact that for some legal advice, even if provided through digital means or the legal advice sector, may not be a realistic option, the Inquiry should consider how such preventive measures could be delivered through other means, and particularly ones that are embedded in local communities and which individuals would have cause to visit whether or not they have concerns over legal issues. One possible source of inspiration for such a development could be the approach being developed in Manchester through its Greater Manchester Strategy 2025, which entails the development of *Living Well* hubs that are embedded into local communities are provide a range of services to those communities.⁸¹

It is well-established that negotiation, mediation, early neutral evaluation, collaborative law and other forms of consensual resolution process work well to help individuals and businesses to resolve their disputes speedily and at lower cost than resolution via litigation. As with preventive justice they therefore minimise the diversion of financial and human capital on dispute resolution.

⁷⁸ See, for instance, T. Barton, *Preventive Law and Problem Solving Lawyering of the Future*, (Vandeplas, 2009).

⁷⁹ Department of Constitutional Affairs, *civiljustice.2000*, which is available at: <https://webarchive.nationalarchives.gov.uk/ukgwa/20060215055137/http://www.dca.gov.uk/cj2000/cj2000fr.htm>.

⁸⁰ Lady Carr LCJ, *Speech to Civil Justice Council National Forum 2023*, at 4, which is available at: <https://www.judiciary.uk/wp-content/uploads/2023/11/20231120-CJC-National-Forum-LCJ-Speech-as-delivered.pdf>.

⁸¹ Greater Manchester Strategy 2025 at 36-37, which is available at: https://togetherwearegm.co.uk/media/k1kftjiv/greater-manchester-strategy-2025-35-screen_reader.pdf.

As Lord Dyson put it, ‘*The effective promotion of ADR is unquestionably in the public interest.*’⁸² Such forms of dispute resolution work effectively through the provision of skilled professional assistance to parties engaged in disputes. Such assistance works by, variously: providing an independent third party to facilitate negotiations and/or provide the parties with a critical assessment of the dispute or their prospects of success; facilitating effective communication between the parties where otherwise direct, unmediated, communication might either be ineffective or help to entrench the parties’ positions; providing the means through which parties can be helped to identify the source of the dispute, multiple options to resolve it, and to test which options are acceptable and thus promoting creative problem-solving and offering the possibility of forms of resolution that courts cannot provide, e.g., so-called win-win solutions to disputes e.g., the continuance or improvement of the underlying relationship between the parties. Preventive justice and consensual forms of dispute resolution also promote effective dispute resolution by diverting potential claims from the courts, thus enabling them to focus their resources on those particular disputes that cannot be resolved consensually, thus helping to promote more effective and efficient dispute resolution via litigation. The literature on these benefits is vast.⁸³ What, however, consensual forms of dispute resolution, do not provide is right vindication, which in many cases may well be necessary while equally being something that ought to be available as a matter of right for individuals within society and for society itself given the need for rights vindication and enforcement to give effect to the law and the rule of law.⁸⁴

It is also important to account for the varying circumstances of individuals and the type of legal problem(s) that they may need to navigate. Our response to Q3 explains the challenges some may encounter in accessing justice without legal advice and/or representation and these apply equally to the early, or alternative, resolution of disputes. Although legal aid has been dealt with elsewhere in this response, it is important to note that recent findings by the Family Mediation Council,⁸⁵ which highlight the importance of considering legal aid provision alongside dispute resolution outside of the court process. The report indicates that that about a quarter of mediators who offer legal aid (for MIAMs) have stopped cases in the past year and 55% have indicated they will stop in the next year or so. The number of mediators offering legal advice has halved since 2018, with now only 86 services left in England and Wales. It is suggested that any strategy on legal aid should include full consideration of its role and function on supporting out of court dispute resolution.

There is also some evidence that in the context of criminal justice, the use of restorative justice approaches can help, amongst other things, to reduce recidivism, which in turn can help to reduce the harms, and their attendant personal and other costs to victims of crime by reducing criminality. The difficulty here though is that it appears from a leading meta-analysis

⁸² Lord Dyson MR in *S. Blake, J. Browne, S. Sime, The Jackson ADR Handbook*, (OUP, 2013) at v.

⁸³ A useful summary of the benefits of the use of non-court-based, consensual dispute resolution processes is set out in S. Shipman, B. Waters & W. Wood KC, *Brown & Marriott’s ADR Principles and Practices*, (Sweet & Maxwell, 2019), chap. 3

⁸⁴ On which see Lord Reed in *R (UNISON) v Lord Chancellor* [2017] UKSC 51; [2020] AC 869 at [66]-[77].

⁸⁵ <https://www.lawgazette.co.uk/news/landmark-mediation-report-highlights-legal-aid-crisis/5124591.article#:~:text=Low%2Dincome%20families%20eligible%20could,landmark%20benchmarking%20report%20has%20suggested.>

of restorative justice programmes that the claim that it reduces recidivism is over-stated. It concluded that, at best, such programmes were '*related to small reductions in general recidivism*', notwithstanding the fact they provided other worthwhile benefits, such as greater victim satisfaction with the criminal justice process, procedural fairness and so on.⁸⁶

We would further highlight that whilst mediation, legal awareness and other forms of ADR are all useful tools, the Inquiry may also wish to consider the impact of routinely unlawful decision making by public bodies on access to justice and the reasons for this. In the context of social welfare law, many cases legal aid lawyers see daily consist of decisions being made by public bodies such as local authorities or the DWP which are clearly unlawful. Whilst there will of course be some cases where there is a significant dispute of fact or a dispute over the interpretation of a law, there are many more where the public body is simply disregarding the factual position or the law and gatekeeping access to services through unlawful decisions. This is likely due to constraints on local authority resources. When subject to legal challenge through a pre-action protocol letter, a significant number of the cases resolve and the public body concedes the issue. However, prior to receiving the pre-action protocol letter, the public body has often ignored queries or representations by the individual affected or those supporting them, such as an advocate or keyworker. As outlined in previous questions, many individuals never get the opportunity to access a lawyer to write such a letter and as such remain without access to justice. If public bodies were better incentivised to make lawful decisions in the first instance, this could be a further way to reduce the need to have recourse to the justice system.

Q8. What role is there for digital innovation and data collection in supporting access to justice?

While digital innovation offers an opportunity to further access to justice, too often digital innovation projects have been embarked upon with the primary aim of saving costs and have had minimal, if not negative, impacts on the ability of members of the public to realise their rights.

Future digital innovation and data collection projects within the justice sector should prioritise and safeguard access to justice. Importantly, this objective should not only apply to reforms to the court and tribunal system but also to public policy related to the legal services sector generally and, in particular, to the Legal Aid system.

For legal advice services, this would include that face-to-face services are protected for those who would benefit from them. Empirical research by Burton demonstrated the increased value of face-to-face advice provision compared to support offered over the telephone, particularly for vulnerable clients or those with complex matters or other needs.⁸⁷

⁸⁶ See, L. Fulham et al, *The effectiveness of restorative justice programs: A meta-analysis of recidivism and other relevant outcomes*, Criminology & Criminal Justice (2023) 1 at 25, which is available at: <https://journals.sagepub.com/doi/epub/10.1177/17488958231215228>.

⁸⁷ Burton, M. (2018). Justice on the line? A comparison of telephone and face-to-face advice in social welfare legal aid. *Journal of Social Welfare and Family Law*, 40(2), 195–215.
<https://doi.org/10.1080/09649069.2018.1444444>

Although some of the problems associated with telephone-only advice are addressed by the use of videocall (e.g. some elements of body language can be communicated), further work by Burton has demonstrated the value of advisor and advisee sharing physical space and having a mutual sense of place, which allows, for example, advice to be tailored based on local circumstances.⁸⁸

Remote advice, whether via videocall or telephone, may be effective for some clients, particularly those who would otherwise face barriers to accessing support, either due to disability or geographical isolation. However, to be effective, remote access must be supported by robust document-sharing systems and other forms of technological assistance in order to be effective.

The COVID-19 Pandemic resulted in a significant shift towards remote advice, not all of which has reverted. Drawing on survey data, Creutzfeldt and Sechi demonstrate the concerns raised by those advising in the Pandemic: on the ability to effectively and sustainably provide advice, on clients' capacity to fully access and engage with services and on those members of the public who cannot access advice services at all and suffer from what the authors call 'digital abandonment'.⁸⁹ Although the circumstances have changed, this research still provides a useful warning for over-reliance on technology.

In 2019, Dr Natalie Byrom published a report entitled "Digital Justice: HMCTS data strategy and delivering access to justice," which explored the possible benefits and risks of utilising the ongoing court reforms to develop a more considered data-usage policy.⁹⁰ Byrom highlights that effective data collection is crucial for both advancing access to justice and ensuring compliance by certain public authorities with the Public Sector Equality Duty.⁹¹

Appropriate data collection is vital in order to ensure that the impact of digital innovation projects, with whatever primary object, do not restrict access to justice. Further, data collection must extend not just to the information related to the protected characteristics relevant to the Public Sector Equality Duty but to other important factors, such as geographical location, socio-economic disadvantage and level of legal representation.

However, plainly collecting data also comes with privacy risk, as has been demonstrated by the recent cyber-attack of the Legal Aid Agency. Any data collection programme put in place robust privacy safeguards in order to not just prevent data breaches but also to ensure high levels of trust in and engagement with the justice system.

Byrom produced a separate report in 2019 entitled "Developing the detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice", which drew from two

⁸⁸ Burton, M. (2020). Lost in space? the role of place in the delivery of social welfare law advice over the telephone and face-to-face. *Journal of Social Welfare and Family Law*, 42(3), 341–359. <https://doi.org/10.1080/09649069.2020.1796217>

⁸⁹ Creutzfeldt, N., & Sechi, D. (2021). Social welfare [law] advice provision during the pandemic in England and Wales: a conceptual framework. *Journal of Social Welfare and Family Law*, 43(2), 153–174. <https://doi.org/10.1080/09649069.2021.1917707>

⁹⁰ Byrom, N (2019) 'Digital Justice: HMCTS data strategy and delivering access to justice', available: <https://justicelab.org.uk/wp-content/uploads/2022/09/DigitalJusticeFINAL.pdf>

⁹¹ Section 149 of the Equality Act 2010.

expert workshops.⁹² The report offers a valuable contribution in the form of “an irreducible minimum definition of ‘access to justice’”, made up of the following components: access to the formal legal system; access to an effective hearing; access to a decision in accordance with substantive law; and access to a remedy.⁹³ It is against these considered standards that the impact on access to justice should be measured. As such, appropriate data collection and post-implementation review (considering impact against appropriate access to justice standards) should be an integral part of any digital innovation policies.

Again, the COVID-19 Pandemic offers an example of the potential risks of digitisation being imposed without proper safeguards for access to justice. A rapid review produced on behalf of the Civil Justice Council and the Legal Education Foundation, entitled “The impact of COVID-19 measures on the civil justice system”, gathered evidence of the difficulties faced by users in remote hearings.⁹⁴ The report notes that those on low incomes were disproportionately impacted by a lack of access to legal advice, which demonstrates that socio-economic disadvantage is a key lens by which to understand barriers to access to justice, notwithstanding that the Public Sector Equality Duty does not directly take it into account.

More broadly, when considering digital innovation, it is important to bear in mind those who are most likely to be digitally excluded may also be those who are most likely to struggle to access justice. Age, socio-economic status and disability are all key factors affecting digital exclusion⁹⁵. These criteria coincide with vulnerability to legal problems⁹⁶ and any proposed digital innovation that purports to promote access to justice would need to carefully consider how those who are digitally excluded would benefit from such innovation.

More recently, a significant piece of work on the digitisation of court and tribunal processes is Mulcahy and Tsalapatanis’s book *Digital Justice*,⁹⁷ which explores the elements of the physical courtroom experience which are lost if proceedings are moved online, such as the time and space for pre-court negotiations and the sense of ceremony (and resultant levels of respect to the court). The authors advocate for the application of user-centred digitisation, meaning the close involvement of those with lived experience of using the relevant systems, rather than merely the deployment of off-the-shelf products from the private sector.⁹⁸

The increasing prevalence of AI and online legal resources and public legal education are often put forward as solutions to the access to justice crisis. In addition to the concerns

⁹² Byrom, N (2019) “Developing the detail: Evaluating the Impact of Court Reform in England and Wales on Access to Justice”, available: <https://static1.squarespace.com/static/5e554e0540b64a147e3f1b2f/t/6484d632be618d23ed90c481/1686427187619/Developing-the-Detail-Evaluating-the-Impact-of-Court-Reform-in-England-and-Wales-on-Access-to-Justice-FINAL.pdf>

⁹³ *ibid*, p5.

⁹⁴ Byrom, Natalie; Beardon, Sarah; Kendrick, Abby (2020) “The impact of COVID-19 measures on the civil justice system”

⁹⁵ House of Lords Communications and Digital Committee, Digital Exclusion June 2023

<https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/219.pdf> p10

⁹⁶ L Winstersteiger, Legal Needs, Legal Capability and the Role of Public Legal Education

<https://asauk.org.uk/wp-content/uploads/2018/02/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf> p14

⁹⁷ Mulcahy, L., Tsalapatanis, A. (2024). Conclusion: Towards Inclusive Design. In: *Digital Justice*. Palgrave Socio-Legal Studies. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-65265-3_5

⁹⁸ pp 77–92

about digital exclusion set out above, there is also evidence that ‘people experiencing legal issues find existing resources confusing, bewildering and difficult to navigate⁹⁹’. Byrom highlights that whilst AI might be helpful in giving individuals clear guidance that their problem might be legal and give advice about what to do next, this information may not be accurate as generative AI has not been trained specifically on legal data.¹⁰⁰ There is also the significant risk of ‘hallucinated’ cases, which has attracted judicial criticism¹⁰¹.

Q9. 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?

There have been multiple reviews of the legal aid system, including but not limited to:

- The Bach Commission on the Right to Justice 2017¹⁰² (this was a broader review of the justice system which noted significant problems with the legal aid system)
- The Post-Implementation Review 2019¹⁰³
- The Westminster Commission on Legal Aid 2021¹⁰⁴
- The Independent Review of Criminal Legal Aid 2021¹⁰⁵
- Legal Aid Means Test Review 2019-22¹⁰⁶
- Legal Aid Census 2022¹⁰⁷
- The Review of Civil Legal Aid 2023¹⁰⁸. This included a detailed call for evidence addressing this question in relation to civil legal aid, the summary of which was published in 2025.¹⁰⁹
- Government’s Management of Legal Aid, 2024¹¹⁰

Some of these are also referenced in our response to Q1 above in addition to other relevant reports.

The conclusion of most of these reports reveal common threads, including the following:

⁹⁹ Natalie Byrom, Where has my justice gone?, Nuffield Foundation, March 2024 <https://www.nuffieldfoundation.org/wp-content/uploads/2024/Where-has-my-justice-gone.pdf> p19

¹⁰⁰ Ibid p20.

¹⁰¹ See for example R(Ayinde) v LB Haringey [2025] EWHC 1383 <https://www.judiciary.uk/wp-content/uploads/2025/06/Ayinde-v-London-Borough-of-Haringey-and-Al-Haroun-v-Qatar-National-Bank.pdf>

¹⁰² The Right to Justice, final report of the Bach Commission September 2017 https://fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB-2.pdf

¹⁰³ <https://www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo>

¹⁰⁴ Inquiry into the sustainability and recovery of the legal aid sector, October 2021 https://www.apg-legalaid.org/sites/default/files/The%20Westminster%20Commission%20on%20Legal%20Aid_WEB_0.pdf

¹⁰⁵ <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid#final-report>

¹⁰⁶ <https://www.gov.uk/government/consultations/legal-aid-means-test-review/legal-aid-means-test-review#chapter-8-implementation-and-review-of-the-new-legal-aid-means-tests>

¹⁰⁷ Denvir, Kingham, Mant, Newman & Aristotle, We are Legal Aid: Findings from the 2021 Legal Aid Census, March 2022 https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid_Findings-from-the-2021-Legal-Aid-Census_Final.pdf

¹⁰⁸ <https://www.gov.uk/guidance/civil-legal-aid-review>

¹⁰⁹ https://assets.publishing.service.gov.uk/media/67923b41e982ca138427fc0d/Review_of_Civil_Legal_Aid_-_Analysis_Summaries_web.pdf

¹¹⁰ <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

- The current system of legal aid is administratively cumbersome and inefficient. The forms and processes involved in administering legal aid take away from time that could be spent on legal aid work
- Technology could be better used to streamline processes and improve digital platforms for administering legal aid.
- That the rates of legal aid pay are unsustainably low and firms are under huge pressure. Many are ceasing legal aid practice or are closing. This has resulted in many legal aid 'deserts'.
- Legal aid practitioners are leaving the profession, and they are not being replaced by the next generation of lawyers. Recruitment and retention are a significant problem in the sector due to high stress levels, vicarious trauma and low rates of pay.
- The eligibility thresholds for civil legal aid are still too stringent and still exclude many who need legal aid.
- The scope of legal aid should be broadened.
- There is a very high demand for legal aid services in the community, and there are insufficient providers to meet this
- Supplementary advice providers are fragmented and similarly under financial pressure so are unable to plug the gaps left by the current legal aid system.

We would also highlight the recently published report by LAPG which examines the amount of non-chargeable work that legal aid providers undertake each week¹¹¹. This report reveals that the largest amount of non-chargeable work is spent on billing related administration, further evidencing the cumbersome nature of the system, which is inadequately remunerated.

Whilst some steps have been taken to address these concerns, such as the amendments to the means test which took place after the means test review, or the announcements regarding the proposed increase to fees in housing and immigration, these are very small steps that are not enough to address the years of underfunding of this sector and the impact of LASPO. Without further significant investment, it is unclear how the legal aid system could be sustainable. We would urge that the recommendations of the many previous reviews into the legal aid system are acted upon and that investment is made into increasing rates of pay to providers, as well as investing in the training and development of junior legal aid lawyers, to support the sustainability of the sector. Urgent action is needed to sustain the expertise of this sector.

When considering its investment into legal aid, we would reiterate that law is a contributing factor in poor health and health inequalities as set out in Q2 above. Investing in legal aid is likely to create savings to the public purse more widely, for example by reducing pressure on health services as outlined above.

¹¹¹ 'Non-Chargeable Time in Legal Aid Work' research by Legal Aid Practitioners Group (analysis by Dr Jo Wilding) https://lapg.co.uk/wp-content/uploads/Non-chargeable-Time-in-Legal-Aid-Work-Sept25.pdf?mc_cid=55d47f00cd&mc_eid=3c4c213c54

Q10. 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?

It is likely too early to know the full impact of the LAA cyber-attack, in particular given that it is an ongoing crisis.

The attack has had significant impacts on providers of legal aid work, the most notable of which have been financial¹¹². Some providers are describing it as ‘the straw that breaks the camel’s back’¹¹³. Although the LAA has set up a system whereby providers can receive an average weekly payment, this is based on the average they were paid in the three months leading up to the data breach. This may not be representative of the provider’s regular billing for a range of reasons. There are also significant worries about payments being clawed back once the systems are restored and bills are processed.

At the outset of the breach, providers were also worried that legal aid certificates that have been granted using ‘delegated functions’ in the absence of being able to use the CCMS system may not be honoured by the LAA if they are refused on merit or if the evidence obtained for the client’s means assessment is not considered sufficient by the LAA (although there LAA has since provided some assurances regarding use of delegated functions)¹¹⁴.

There is also the huge administrative burden to consider – firstly the additional burden of reverting to a paper-based system but secondly, the burden that will arise when the new online system is set up and all the paper-based bills and certificate applications for the last several months will need to be uploaded.

Whilst providers had previously been told that it was hoped that access to CCMS and Civil Apply would be restored by the end of September, on 24 September the LAA confirmed in its update bulletin that this would no longer be possible and a new timescale for restoration of this service has yet to be published.

Whilst it is accepted that the LAA has published information about the data breach to the public and it has received some news coverage, our perception is that more could have been done to raise awareness of the nature and extent of the breach, which is significant. We are not aware of any attempt to contact those affected by the breach directly other than through public announcement on the gov.uk website. The personal circumstances of many of those in receipt of legal aid means that they may not have been made aware of or been able to read this announcement. For those that are aware of the breach, their trust in the justice system is likely to be (further) impacted¹¹⁵.

¹¹² See for example <https://www.lawgazette.co.uk/news/laa-cyber-attack-could-push-barristers-into-debt/5123634.article> and <https://www.lawsociety.org.uk/topics/business-management/partner-content/how-the-legal-aid-agencys-cyberattack-has-impacted-law-firms-financial-security>

¹¹³ <https://www.theguardian.com/law/2025/aug/03/legal-aid-cyber-attack-has-pushed-sector-towards-collapse-say-lawyers>

¹¹⁴ <https://www.lawsociety.org.uk/topics/legal-aid/legal-aid-agency-data-breach>

¹¹⁵ <https://www.economicsobservatory.com/will-digital-failures-undermine-trust-in-the-justice-system>

The LAA response to this incident was perceived by the sector to be inadequate¹¹⁶. The cyber-attack has revealed the weaknesses in the LAA's IT systems and upgrades are clearly needed as a matter of urgency. Every month that these are delayed places greater pressure on providers who were already under significant financial pressure before the cyber attack.

More generally steps need to be taken for the relationship between the Legal Aid Agency/Ministry of Justice and legal aid providers to improve so that it is one based on trust. It is only if this is addressed that potential ideas (such as the high trust model in the Netherlands referred to in Question 1) might be realistically considered.

September 2025

¹¹⁶ <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/legal-aid-agency-must-get-a-grip-after-cyber-attack>