



National Audit Office



REPORT

# Government's management of legal aid

Ministry of Justice, Legal Aid Agency

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National Audit Office

# Government's management of legal aid

**Ministry of Justice, Legal Aid Agency**

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## **Report by the Comptroller and Auditor General**

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Commons in accordance with Section 9 of the Act

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**Gareth Davies**  
**Comptroller and Auditor General**  
**National Audit Office**

**6 February 2024**

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## Key facts

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**April 2013** **£1,856mn** **£728mn**

implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012

total spending on legal aid in 2022-23

real-term reduction in legal aid spending between 2012-13 and 2022-23

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**40%** of family dispute cases in the period from January to March 2023 where neither the applicant nor respondent had legal representation (January to March 2013: 14%)

**9 percentage point** decrease in the proportion of the population in England and Wales within 10 kilometres of a provider of legal aid housing advice, for issues such as eviction proceedings, from 73% in 2013-14 to 64% in 2022-23

**11 percentage point** decrease in proportion of UK income taxpayers that had an income below the gross income threshold for civil legal aid between 2012-13 and 2020-21, from 73% to 62%

**15%** uplift to most legal aid fees for criminal cases in 2022, in response to a recommendation from a 2021 independent review into the sustainability of criminal legal aid<sup>1</sup>

**28 years** since the Ministry of Justice (MoJ) last increased legal aid fees for civil cases – MoJ has not adjusted fees for inflation and it reduced fees by 10% in 2011-12

**Note**

<sup>1</sup> The overall impact of the uplifts differs for barristers and solicitors, see paragraphs 13 and 3.9 for more detail.

# Summary

**1** Legal aid is government funding for legal services for people who meet certain eligibility criteria. In England and Wales, legal aid funding is administered by the Legal Aid Agency (LAA), an agency of the Ministry of Justice (MoJ). Legal aid includes support for criminal and civil legal matters provided to individuals by private legal firms and not-for-profit organisations (providers).

**2** MoJ introduced reforms to legal aid in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), implemented in April 2013. Through the reforms, MoJ aimed to:

- discourage unnecessary and adversarial litigation at public expense;
- target legal aid to those who need it most;
- make significant savings to the cost of the scheme; and
- deliver better overall value for money for the taxpayer.

The reforms significantly curtailed the types of cases for which people could claim legal aid and made some adjustments to financial eligibility criteria.

**3** We last reported on civil legal aid in 2014.<sup>1</sup> We found that while the reforms had been successful in reducing legal aid expenditure, the wider impacts of the changes were poorly understood by MoJ. We have not reported on criminal legal aid since LASPO was implemented.

**4** In recent years, MoJ has commissioned several reviews of legal aid, following stakeholder concerns about access to justice and the sustainability of both the criminal and civil legal aid sectors. Increases in the number of criminal cases and impacts of wider government policy such as the Illegal Migration Act 2023 are expected to further increase pressures on legal aid and the justice system. The focus of this report is to evaluate the processes and information MoJ and LAA have at their disposal to manage the overall legal aid system and to ensure value for money, now and in the long term. We have not examined LAA's operational efficiency, nor have we sought to examine each area of criminal or civil legal aid in depth. This report covers:

- MoJ's progress in understanding the full costs and savings from the LASPO reforms (Part One);

<sup>1</sup> Comptroller and Auditor General, *Implementing reforms to civil legal aid*, Session 2014-15, HC 784, National Audit Office, November 2014.

- how MoJ and LAA are ensuring that legal aid provides the level of access to justice that the reforms intended (Part Two); and
- how effectively MoJ and LAA understand and manage legal aid markets to ensure sustainability (Part Three).

**5** We conclude on whether MoJ and LAA can demonstrate that they are delivering value for money from legal aid.

## **Key findings**

### Costs and savings of reforms

**6 MoJ has achieved its aim of making significant reductions to its legal aid spending since the LASPO reforms, with real-term expenditure reduced by over a quarter.** In real terms, spending on legal aid fell by £728 million (from £2,584 million to £1,856 million, a 28% reduction) between 2012-13 and 2022-23 (in 2022-23 prices) as case volumes fell. Although this reduction may not all be directly attributable to reforms, legal aid spending reduced by £694 million by 2019-20, £147 million more than MoJ had estimated it would when the reforms were introduced. Most of the reduction occurred from 2013-14 to 2015-16, with expenditure remaining largely stable since (paragraphs 1.4, 1.7 and 1.8, and Figure 2).

**7 MoJ still does not know the full costs and benefits of LASPO as it has not made progress in understanding how the reforms may have affected costs in other parts of the criminal justice system and wider public sector.** Since our 2014 report, MoJ has made some progress in probing wider impacts of the reforms. For example, in its 2019 review of the reforms, MoJ accepted stakeholder concerns that removing early advice for some categories of law from the scope of legal aid may mean that cases escalate into a more complex and therefore costly form. However, MoJ has made little progress in understanding the potential scale of these costs except for estimating the relative costs of mediation versus court for family cases (see paragraph 8). Legal sector stakeholders we consulted provided us with examples of where they feel costs have shifted from legal aid funding to elsewhere in the public sector. Examples included local authorities funding legal advice for immigration cases to mitigate costs to themselves later on, and the negative impact on court efficiency of a significant increase in people representing themselves in civil cases. Between January and March 2023, the proportion of family dispute cases where neither the applicant nor respondent had legal representation was 40% (compared to 14% for the same period in 2013). Stakeholders argue people representing themselves can increase case duration, but HM Courts & Tribunal Service (HMCTS) has not looked at the impact of self-representation in family courts since 2018. Data limitations hinder its ability to make an accurate assessment, for example, HMCTS only records estimated, not actual, hearing lengths (paragraphs 1.9 to 1.11, 1.17 and 1.19, and Figures 3 and 4).



**8 MoJ recognises that changes introduced by LASPO reduced access to early advice and unintentionally reduced publicly funded mediation referrals, but more than a decade on it has not been able to increase take-up.** Providing access to early legal advice and mediation has the potential to reduce wider costs to the system. MoJ acknowledges that removing early legal advice through the reforms may have caused additional costs elsewhere, but it does not hold the data it needs to understand the cost-benefit case for early advice. In 2022, MoJ attempted to pilot a scheme promoting legal aid funded access to early advice, to help build its case for change. However, the pilot was unsuccessful, securing three participants from an intended 1,600 due to shortcomings in its approach to recruiting participants. In family courts, referrals to mediation have reduced significantly since LASPO. This is because the reforms withdrew most funding for solicitor consultations which were the most common source of mediation referrals. MoJ estimates there would be substantial financial savings from diverting family court cases to mediation and so has introduced initiatives to boost mediation levels. However, legally aided mediation assessments have remained around 60% below their pre-LASPO levels. MoJ originally expected assessments to increase by around a third following the reforms (paragraphs 1.12 to 1.13, 1.15, and 1.18 to 1.19, and Figure 5).

#### Access to legal aid

**9 MoJ does not collect sufficient data to understand whether those who are entitled to legal aid are able to access it.** Delivering access to justice is one of MoJ's three key priorities. However, MoJ lacks a good understanding of both the demand for legal aid and the capacity of existing providers so it cannot ensure advice is available to those entitled to it. We recognise that assessing demand is inherently challenging but MoJ could do more. This report presents the available information on access and sets out the limitations of these datasets. MoJ and LAA do not estimate overall demand for legally aided services. LAA monitors capacity risks through its quarterly capacity reviews and holds data on contracted providers' legal aid activity, but it does not routinely capture why some providers may undertake few or no legal aid cases. In 2022-23, in all civil law categories except family and mental health, at least one in 10 contracted firms took on no cases. There may be various reasons why providers do not take on work. For example, providers may not have the capacity to take on new clients or there may be low demand. Respondents to our consultation also suggested providers may only take on more straightforward cases due to financial constraints. Without the necessary data it is not possible to tell, and MoJ and LAA do not collect routine data on the reasons for low provider activity. Similarly, MoJ does not track whether individual applicants to LAA's exceptional case funding scheme are able to access a provider once their application for funding is approved. The scheme provides legal aid for issues outside the scope of legal aid, where a failure to do so would breach or risk breaching an individual's human rights or EU law, or for inquest cases with a wider public interest determination (paragraphs 2.9 to 2.14, 2.19, and 2.23 to 2.24, and Figure 10).

**10 The available evidence suggests that limited provision in some areas of the country may make it harder to access legal aid.** Reducing the scope of legal aid naturally led to a smaller number of firms doing legal aid work as the market adjusted to fewer cases being eligible for funding. Our analysis shows that sustained decreases in the number of legal aid offices means a smaller proportion of the population are now within 10 kilometres of an office in most categories of civil law. For example, the proportion of the population in England and Wales within 10 kilometres of a legal aid office for housing advice, for issues including eviction, fell nine percentage points, from 73% in 2013-14 to 64% in 2022-23. The proportion in 2022-23 falls to 57% when looking only at housing offices that actively took on new cases. The lack of a local office does not automatically prevent people from accessing support, for example, firms can provide some advice remotely. However, MoJ and LAA recognise 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. It also acknowledges that remote support will not be suitable for everyone (paragraphs 2.15 to 2.22, and Figures 7 to 9).

**11 The proportion of the population eligible for support has reduced, as MoJ has not yet changed financial eligibility thresholds.** MoJ recently reviewed its financial eligibility criteria for legal aid, the financial thresholds for which have not increased in cash terms for over a decade. The impact of static thresholds, set against wage inflation, means that a smaller proportion of the population are now eligible for legal aid. Between 2012-13 and 2020-21, there was an 11 percentage point decrease in the proportion of UK income taxpayers who had an income below the gross income threshold for civil legal aid. There was also a 16 percentage point decrease in those who had an income below the gross income threshold for criminal cases in magistrates' courts. MoJ has now proposed to update its financial eligibility criteria, which will make more people eligible for support. This includes clearer definitions of who it is trying to target, for example, those with below median income for civil legal aid. However, limitations of LAA's digital systems and changes required due to the Illegal Migration Act 2023 mean that some of the changes will not be implemented until 2025. Additionally, new thresholds risk being out of date even when they are introduced as they are currently based on 2019-20 data and average earnings increased by a quarter between April 2020 and October 2023. MoJ intends to consider the thresholds again prior to implementation and then within three to five years of the final elements of the new means test coming into operation (paragraphs 2.6 to 2.8).

**12 The exceptional case funding scheme routinely approves certain types of immigration cases, but MoJ has not updated its approach to bring them into the scope of legal aid. This approach may not be cost effective and presents access to justice risks.** Immigration cases accounted for two-thirds of applications for exceptional case funding in 2022-23. LAA approves the vast majority of these applications (87% in 2022-23), which typically relate to immigration action where a lack of legal support would breach the individual's human rights. These cases are being funded via a more complex and potentially more expensive route than standard legal aid applications, but have a very high likelihood of approval. Evidence suggests that compared with a standard legal aid application, exceptional case funding applications are more resource-intensive for LAA to process and more difficult for providers or individuals to apply for (paragraphs 2.24 to 2.26, and Figures 11 and 12).

#### Sustainability of the market

**13 MoJ has been slow to respond to market sustainability issues.** MoJ and LAA are aware that there are some areas of England and Wales where there may be unmet need for certain categories of law and of stakeholder concerns around the sustainability of the sector. For example, between 2018 and 2020, LAA ran retendering exercises for 14 schemes for on-the-day emergency housing advice, but no provider was found across eight schemes covering 11 courts. In 2021, Lord Bellamy published his review of criminal legal aid, which found that the current fee schemes do not accurately reflect work undertaken by providers. He recommended that MoJ increase overall fees for barristers and solicitors by at least 15%. In response, MoJ implemented a 15% increase to most fees for criminal cases in September 2022, but it only committed to raising overall fees for solicitors by 11%. MoJ stated that this was because it was still considering reforms to certain fee elements aimed at removing perverse incentives, following another review recommendation. This led to a Judicial Review which reached a judgment on 31 January 2024. Civil fees have been frozen since 1996, then MoJ reduced them by 10% between October 2011 and February 2012. In real terms, civil legal aid fees are now approximately half what they were 28 years ago. MoJ has only recently begun to review civil legal aid fees as part of its wider review of the system and has not committed to proposing changes to specific fees following this (paragraphs 2.21, 3.7 to 3.9, and 3.13).

**14 LAA has started to explore how different contracting approaches may make the market more attractive for providers.** LAA is limited in how it can incentivise providers and respond to risks to market sustainability, but it does have some levers it can use. For example, where the number of providers in an area falls below LAA's minimum provision thresholds during a contract term, LAA can address gaps in provision by running additional procurement activity. However, this is not always successful or cost effective due to the administrative burdens it creates for both LAA and providers. Generally, firms are otherwise limited to joining the market or expanding their provision of legal aid at the beginning of a contract period (typically three years), though evidence suggests that some firms may wish to join the market or expand their provision during the contract term. LAA is exploring how different approaches to contracting for criminal legal aid could reduce barriers to entry for providers. It intends to consider similar changes to civil procurement pending progress on MoJ's Review of Civil Legal aid (paragraph 3.7 and Figure 13).

**15 Demand for criminal and some types of civil legal aid is likely to increase at a time when the market is in a fragile position to respond.** MoJ expects that the government's Illegal Migration Act (IMA) will increase demand for civil legal aid. An increase in the number of police officers, which will likely lead to more arrests, is likely to increase demand for criminal legal aid. At the same time, many respondents to our consultation highlighted difficulties in training and recruiting staff and expressed plans to reduce or withdraw their legal aid services in the near future. MoJ has committed to a fee increase of 15% for areas of law covered by the IMA in an attempt to attract sufficient providers. However, MoJ expects that providers will de-prioritise other immigration work to meet expected demand (paragraphs 3.11 to 3.13).

**16 MoJ cannot routinely identify emerging market sustainability risks, which undermines its ability to ensure the sustainability of legal aid.** MoJ aims to assess the sustainability of legal aid through periodic large-scale reviews but does not do this regularly or routinely. Outside of these reviews, it relies on information from LAA to identify and respond to risks to market sustainability. However, while there are routes for LAA to raise risks with MoJ, LAA lacks routine financial and other data to help it raise sustainability risks early. For example, it lacks routine data on the profitability of legal aid work for providers. Until MoJ and LAA address weaknesses in their understanding of the demand for legal aid, capacity among providers, and whether providers are sufficiently incentivised to stay in the market, neither can sufficiently understand or assess short- or long-term sustainability risks (paragraphs 3.6, 3.9 and 3.14).

## Conclusion

**17** MoJ has succeeded in its objective of significantly reducing spending on legal aid, which has fallen by more than a quarter in the last decade in real terms. Since we last reported, MoJ has done some work to better understand the impact of its reforms and is aware of several areas where changes may have shifted costs elsewhere within government. But it still lacks an understanding of the scale of these costs and so cannot demonstrate how much its reforms represent a spending reduction for the public purse overall. Meanwhile, stakeholders have continued to raise concerns about the reforms' detrimental impact on the efficiency of the wider justice system, including the removal of early advice, and the increase in people representing themselves in courts. The increase in self-representation in family courts is largely due to MoJ's failure to divert people to mediation as planned, which has undermined its objective of reducing unnecessary litigation. MoJ must now build its evidence base on the costs and benefits of providing legal aid at different stages to ensure that it is achieving value for money from its choices.

**18** MoJ has set providing swift access to justice as one of its primary objectives. Theoretical eligibility for legal aid is not enough to achieve this objective if there are an insufficient number of providers willing or able to provide it. MoJ must ensure that access to legal aid, a core element of access to justice, is supported by a sustainable and resilient legal aid market, where capacity meets demand. It is concerning that MoJ continues to lack an understanding of whether those eligible for legal aid can access it, particularly given available data, which suggest that access to legal aid may be worsening. Also concerning is its reactive approach to market sustainability issues. MoJ must take a more proactive approach and routinely seek early identification of emerging market sustainability issues, to ensure legal aid is available to all those who are eligible. Until then, it cannot demonstrate that it is meeting its core objectives and so securing value for money.

## Recommendations

- a** MoJ should work with others to improve its understanding of the costs and benefits of legal issues removed from scope during legal aid reforms, to ensure that changes have not led to less efficient public spending. MoJ should focus on areas of stakeholder concerns including the impact of:
- the removal of early advice for issues such as housing and debt. It should work with stakeholders and other government departments to improve its research approach in this area;
  - increases in people representing themselves in court. It should work with HMCTS to improve data on both the number and impact of self-representation in family and magistrates' courts and any inefficiencies; and
  - reductions in immigration advice on local authorities. It should work with the Department for Levelling Up, Housing & Communities to establish the financial and other impacts on local authorities as a result of this change.

It should respond to any additional costs identified with an action plan to bear down on any wider costs or inefficiencies.

- b** MoJ should, working with LAA and others, ensure that those who want (and are eligible for) legal aid can access it in future by improving:
  - its view of demand and capacity in the legal aid market, for example, by running routine surveys on legal need, working with providers to capture better data on any individuals they cannot help due to lack of capacity, and addressing any barriers found; and
  - how it monitors whether those who apply for its exceptional case funding scheme individually are able to find a provider and acting to address any issues found.
- c** MoJ should assess whether it could reduce the cost of its exceptional case funding scheme by streamlining its approach to processing categories with high approval rates, and act upon its findings.
- d** MoJ should work with providers and representative bodies to establish a workforce strategy that considers the pipeline of future legal aid lawyers and their training to ensure future supply is sufficient to meet its objectives for access to justice, thereby enabling people who seek (and are eligible for) legal aid to access it in future.
- e** LAA should continue to develop its contracting approach to improve the attractiveness of legal aid markets to providers for civil legal aid as well as criminal legal aid. As part of this it should look to reduce barriers to providers entering the legal aid market and to minimise the costs of contracting.
- f** MoJ should work with providers to ensure its fees are set at a level that optimises the balance between cost effectiveness, affordability and access to legal aid (for those who are eligible). For example, with support from LAA, MoJ could liaise with providers to get a more routine understanding of the profitability of legal aid work and market sustainability, such as through open-book accounting.

# Part One

## Changes in costs and savings of legal aid

**1.1** This part of the report sets out:

- what legal aid is and the changes to its provision from 2013;
- the Ministry of Justice's (MoJ's) progress in understanding the financial costs and benefits of its legal aid reforms; and
- the steps MoJ has taken to address potential cost inefficiencies due to the reforms.

### **Overview and history of legal aid**

**1.2** Legal aid refers to publicly funded legal advice or representation in courts and tribunals for people who meet the government's eligibility criteria. This includes support for people accused of a crime (criminal legal aid), as well as those involved in civil legal matters (civil legal aid), for example, family law cases involving children being taken into care.

**1.3** In England and Wales, the Legal Aid Agency (LAA), an agency of the MoJ, administers legal aid funding. This funding is available for people who meet certain eligibility criteria. LAA is responsible for assessing:

- an individual's means (how much income and capital they have);
- the merits of their case (the strength and importance); and
- the scope (whether the case relates to a legal issue covered by legal aid).
- Legal aid is provided in two ways: the LAA oversees the operation of a telephone helpline that assesses eligibility and provides advice; and support (face-to-face or remote) from legal professionals (providers) from private firms or not-for-profit organisations. Providers then bill LAA according to rates set in legislation. These rates can be hourly, or a fixed fee, depending on the type of case.

## Legal aid reforms

**1.4** Legal aid was originally available for all categories of law unless specifically excluded, but the annual cost of legal aid rose significantly between 1990 and 2000. By 2004-05, expenditure on legal aid was over £2 billion and remained at this level for several years. To target its limited resources, MoJ introduced reforms to legal aid as part of its Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which came into effect from April 2013. It aimed to:

- discourage unnecessary and adversarial litigation at public expense;
- target legal aid at those who need it most;
- make significant savings to the cost of the scheme; and
- deliver better overall value for money for the taxpayer.

**1.5** LASPO reduced the circumstances in which legal aid was payable (**Figure 1** on pages 15 and 16). In particular, it significantly limited the types of civil cases for which legal aid was available. This included removing support for almost all legal problems relating to employment, consumer matters, debt and clinical negligence. People could still get legal aid for civil legal issues such as eviction, asylum and special educational needs provision. The reforms also introduced changes to the financial eligibility criteria for legal aid in both criminal and civil law. For example, the reforms introduced an upper income threshold for the Crown Court, meaning those with a disposable income above £37,500 were not eligible for support.<sup>2</sup> Associated reforms also changed some provider fees, including reducing fees paid to civil legal aid providers (except for family mediation).

**1.6** In our 2014 report on civil legal aid, we found that while the reforms had been successful in reducing civil legal aid expenditure, it was less clear whether MoJ had met its wider objective of targeting legal aid at those who need it most and its understanding of the wider impacts of the reforms was poor. We stated that without understanding 'hidden' wider costs, MoJ risked overstating the impact of the reforms and recommended MoJ should evaluate the impact of the reforms more fully. Nearly 10 years on, we are returning to this subject to evaluate progress, and in response to concerns from some stakeholders about access to justice and the sustainability of the legal aid market.

<sup>2</sup> All criminal cases start in a magistrates' court. More serious cases, such as murder or robbery, are passed onto the Crown Court. Crown Court cases usually have a jury, and a judge who decides on the final sentence.



**Figure 1****Changes to legal aid provision introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and associated reforms**

**LASPO removed funding for many types of civil legal aid in 2013 and made changes to the financial eligibility criteria. Associated reforms changed how providers are paid for legal aid work**

**Categories where funding was removed include:**

- All clinical negligence cases except where care during pregnancy or shortly after birth resulted in serious neurological injury
- All consumer cases
- All debt cases except: where the home is at immediate risk of possession; orders for the sale of the home; bankruptcy proceedings where bankrupt estate includes the home
- All education cases except special education needs provision cases and discrimination claims
- All employment cases except those concerning discrimination and victims of trafficking and modern slavery
- All financial provision cases except where domestic violence and/or child abuse can be evidenced against requirements set out in regulations
- All housing cases except where there is a risk of homelessness, repossession or eviction, as well as housing disrepair that risks serious harm to an individual and their family
- All immigration cases except for asylum cases and a limited number of non-asylum cases such as immigration detention and applications for leave to remain where the individual is a victim of trafficking or domestic violence
- Personal injury claims against public authorities except for cases when a public authority had either abused its position or powers, or, where it had breached the applicant's Convention rights, where there was sexual assault, abuse of child or vulnerable adult and any EU cross-border claim
- Certain public law immigration cases (judicial reviews on substantially the same issue as a previous judicial review and some judicial reviews challenging removal directions), while adding a requirement for there to be a benefit to the individual, the individual's family or the environment
- All private family law cases with some exceptions: where domestic violence and/or child abuse can be evidenced, cases in which a judge makes a child party to proceedings, child abduction or those involving cross-border issues under EU and international law
- All welfare benefits cases except for legal help for appeals to the Upper Tribunal and Higher Courts when the case involves a point of law, and civil representation for appeals relating to council tax reduction schemes

**Changes to financial eligibility criteria:****Criminal:**

- Introduced upper income criteria of £37,500 to Crown Court

**Civil:**

- Removed automatic qualification for legal aid if the applicant is in receipt of certain benefits such as Universal Credit as applicants on benefits were now subject to capital testing
- Increased the levels of income-based contributions to a maximum of approximately 30% of monthly disposable income, from a maximum of 20%
- Extended the £100,000 cap on contested assets that can be disregarded to all forms of civil legal services, not just civil representation

**Changes to fees paid for legal aid work included:****Criminal:**

- Reduced the fees for cases that did not proceed to trial (cracked trials) by 25%
- Introduced a fixed fee of £565 for guilty pleas at the Crown Court for cases that could have been heard in a magistrates' court (either way cases)
- Reduced fees paid for murder and manslaughter cases to be the same as fees paid in serious sexual cases
- Reduced fees for dishonesty cases (i.e. fraud) valued between £30,000 to £100,000 to the same as fees for dishonesty cases below £30,000
- Reduced fees for magistrates' court work in London to be the same as fees for other urban areas

**Civil:**

- Reduced all fees by 10%, except for family mediation
- Introduced specific fees for barrister rates which were previously based on unpublished guidelines or benchmark rates
- Fee enhancements, which ensure fees recognise factors such as expertise and speed of the work, capped and defined for family cases in the same way as for civil non-family cases
- Limited the use of King's Counsel in family proceedings to complex, novel or exceptional cases as set out in guidance<sup>1</sup>

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**Figure 1** *continued*

## Changes to legal aid provision introduced by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and associated reforms

**Notes**

- 1 King's Counsel are senior lawyers who have been formally recognised as an expert and leader in their legal field.
- 2 Prior to LASPO, legal aid was available for all matters unless explicitly excluded by the Access to Justice Act 1999.
- 3 The Ministry of Justice made changes to fees for legal aid work in October 2011 under its LAR (Legal Aid Reform) programme.
- 4 This is not an exhaustive list of changes made.

Source: National Audit Office analysis of Ministry of Justice policy documents and announcements

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**Trends in legal aid spending vs expectations**

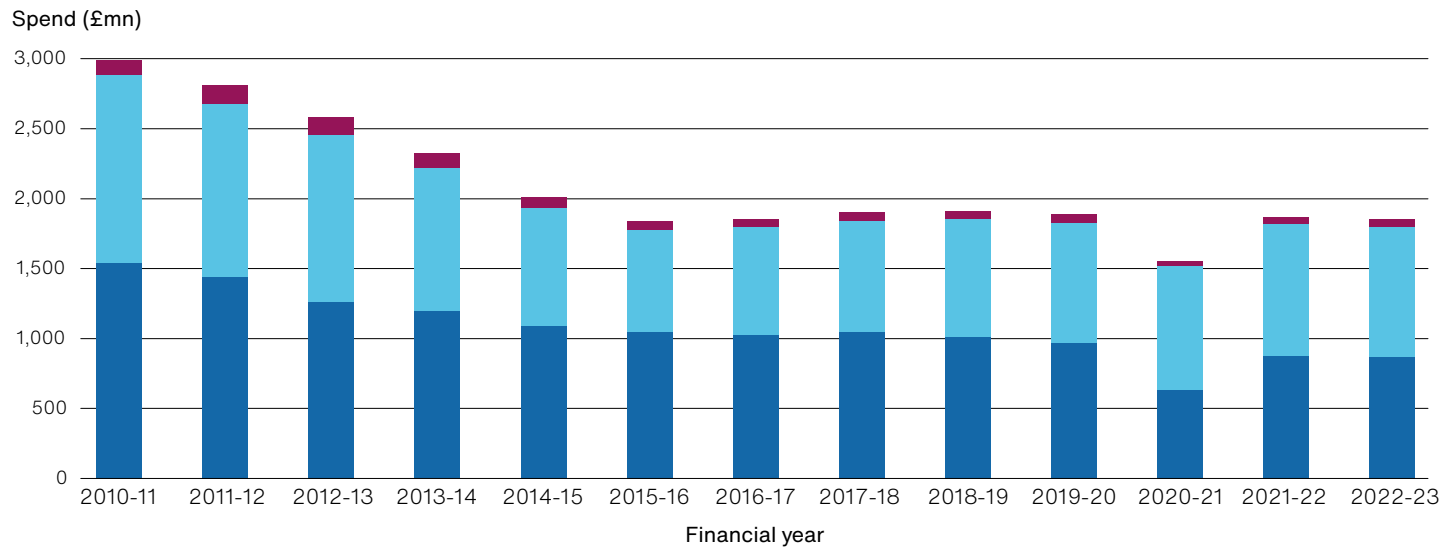
**1.7** Following LASPO, legal aid spending fell by £728 million in real terms between 2012-13 and 2022-23 (from £2,584 million to £1,856 million in 2022-23 prices, a 28% reduction). Spending reductions may not all be directly attributable to the reforms. For example, legal aid spending began to decrease in 2011-12 before the implementation of the reforms. MoJ suggested this may have been partly driven by public perceptions of the availability of legal aid in anticipation of LASPO but acknowledged other potential causes such as a decrease in funding for not-for-profit legal advice. Following restrictions to the availability of legal aid for various areas of civil law, volumes of civil cases funded by legal aid fell significantly (for example, civil representation grants fell by 29% between 2012-13 and 2022-23). However, there has also been a significant decrease in the volume of criminal legal aid cases, corresponding with a decline in the number of arrests. Overall, legal aid expenditure has reduced by £147 million more than MoJ had originally expected. In its 2012 LASPO impact assessment, MoJ estimated that reforms would reduce legal aid spending by £547 million a year by 2019-20 in 2022-23 prices (£410 million in 2009-10 prices) compared to an actual reduction of £694 million.

**1.8** Most of the spending reduction occurred between 2013-14 and 2015-16. Since 2016-17, real-term legal aid spending has remained stable except for a fall in 2020-21 due to reduced court activity during the COVID-19 pandemic (**Figure 2**). While case volumes have fallen following LASPO, average case costs have risen due to increases in case complexity and cases with high amounts of prosecution evidence.

**Figure 2**

Real-term spending by government on legal aid, 2010-11 to 2022-23

Since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in April 2013, spending by the government on both criminal and civil legal aid has fallen in real terms



	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Other	102	130	124	101	77	60	54	58	55	62	34	46	56
Civil legal aid	1,346	1,245	1,198	1,024	841	732	771	796	843	856	883	938	926
Criminal legal aid	1,542	1,438	1,262	1,200	1,091	1,049	1,030	1,047	1,014	971	634	882	873
<b>Total</b>	<b>2,991</b>	<b>2,813</b>	<b>2,584</b>	<b>2,325</b>	<b>2,010</b>	<b>1,841</b>	<b>1,855</b>	<b>1,901</b>	<b>1,912</b>	<b>1,890</b>	<b>1,551</b>	<b>1,866</b>	<b>1,856</b>

**Notes**

- Spending is in 2022-23 prices as sourced from the Legal Aid Official Statistics. 2022-23 prices are based on the deflator series published by the Office for National Statistics, June 2023.
- 'Other' is expenditure on reimbursing defendants who have been acquitted after privately funding their legal representation and other defence costs.

Source: National Audit Office analysis of Legal Aid Official Statistics

## MoJ's understanding of wider costs and savings arising from LASPO

**1.9** Since we last reported, MoJ has sought to understand some wider effects of LASPO. In its 2019 *Post Implementation Review of LASPO*, MoJ noted that stakeholders raised several concerns about how LASPO may impact other costs within the justice system.<sup>3</sup> This included concerns that:

- reducing the scope of civil legal aid may reduce opportunities to resolve legal issues early: this allows problems to deteriorate and become more costly to resolve; and
- an increase in the number of people representing themselves in person (called 'litigants-in-person') is negatively impacting courts.

**1.10** HM Treasury's Managing Public Money framework stresses the importance of a whole-system approach to assessing good value from public funds. However, MoJ still lacks an understanding of the scale of wider costs arising from LASPO. The 2019 review acknowledged the importance of assessing whether costs may have been transferred to other public services when assessing value for money. But MoJ stated that data limitations and difficulties with isolating the impact of LASPO from other policy and economic changes made this assessment too difficult.

**1.11** In response to a consultation we carried out on the impacts of LASPO, stakeholders described examples which, they considered, demonstrated costs previously covered by legal aid shifting to other areas of MoJ or to wider government (**Figure 3**). Respondents are self-selecting and so we cannot assume that the examples stakeholders gave us are representative of all stakeholder views, nor do they indicate the frequency of the issues raised. However, many of these issues align with key themes raised with MoJ in 2019, such as an increase in litigants-in-person negatively impacting courts. Responses included examples of direct cost transfers, whereby legal services no longer eligible for legal aid were provided instead through local authorities (see **Figure 4** on page 20). Research by the World Bank also concluded that not providing legal aid can cause additional cost in other areas of government spending such as health-care, housing, child protection, and imprisonment.<sup>4</sup> Examples from the consultation of savings to wider government bodies from LASPO focused on direct reductions to legal aid spending and savings for public bodies who were less likely to be challenged in court. (See Appendix One for our consultation methodology).

<sup>3</sup> Ministry of Justice, *Post-Implementation Review of Part 1 of LASPO*, 7 February 2019.

<sup>4</sup> World Bank, *A Tool for Justice: The Cost Benefit Analysis of Legal Aid*, September 2019.

**Figure 3**

Examples of reported additional costs and savings arising from the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): summary of 263 responses from 2023 National Audit Office consultation on legal aid

**Common themes included additional workloads for the courts, the health service and local authorities after the scope of legal aid was reduced**

**Pressure on courts**

Increase in litigants-in-person (LIPs), who lack understanding of the judicial system, requiring more support from judges and court staff. Stakeholders argued LIP cases take longer, require more hearings and result in more contested hearings and adjournments.

Cases not resolved at an early stage, instead reaching court in their most expensive form, for example:

- Disrepair claims not brought until a serious health risk is posed.
- Housing possession cases which may not have arisen if early legal aid were available for debt.

**Pressure on health services**

Poor housing conditions not rectified through legal action, thereby causing health problems, eg mould causing respiratory issues.

Stakeholders argued that when cases are not rectified through legal means, eg an individual cannot get debt advice, this can have a mental toll on the individual affected.

Other examples of health costs also provided, such as individuals with no right to public funds unable to be discharged from hospital.

**Pressure on local authorities**

Local authorities support those whose immigration status is in limbo, such as funding free legal advice to help resolve immigration status (see figure 4).

Local authorities providing expensive temporary accommodation to those who were evicted because they were in arrears and couldn't challenge loss of welfare benefits.

**Savings**

Reduction in Legal Aid Agency spending.

Savings for public bodies who are less likely to be challenged in court.

**Other themes**

**Prisons:** pressure on prisons as people without adequate legal advice are likely to spend longer in prison.

**Social services:** pressure on social services when family conflicts are not adequately resolved in courts.

**People not compensated,** eg for poor employment practices or lost earnings.

**School exclusions** not challenged, with negative consequences for the child.

**Notes**

- 1 We surveyed legal providers, practitioners, and representative bodies. The survey was open between 23 June and 21 July 2023.
- 2 We received 263 responses to the question "What additional costs or savings to other public services or wider society, if any, have these examples [of changes in types of cases covered by legal aid since LASPO] had?"
- 3 We reviewed each response, identifying key points from each, then collated these to identify key themes.
- 4 We have excluded responses received which are not attributable to LASPO. For example, some respondents referenced wider savings arising from legal support being available for domestic abuse victims, but this policy was introduced after the LASPO legislation.
- 5 The survey results are not representative of the views of the sector. While many responses align with our wider findings in this report, our respondents were self-selecting and we did not verify the statements made. There may be factors influencing the themes identified other than LASPO.
- 6 A litigant-in-person is someone who represents themselves in court rather than being represented by a lawyer.

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## Figure 4

Example of costs transferring to local authorities following reductions in scope of legal aid for immigration cases

### Some local authorities are funding immigration legal advice for individuals and households

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A person who is subject to immigration control (as defined by the Immigration and Asylum Act 1999) is unable to claim most benefits, tax credits or housing assistance. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 reduced the scope of immigration cases covered by legal aid, meaning these individuals cannot access legal advice to help them change their immigration status. However, a local authority may still have a statutory duty to accommodate and support them. In 2021-22, there were 72 local councils using a national database for councils to record details of households with no recourse to public funds that were provided with accommodation and/or financial support by social services. Analysis of the 72 local councils' data found that collectively in 2021-22 they had provided accommodation and financial support to 3,423 households with no access to public funds, at a cost of £64 million.<sup>1</sup> Respondents to a National Audit Office consultation reported that local authorities also pay for legal advice to help families or individuals change their immigration status so that they no longer have to support them.<sup>2</sup> Academic research published in May 2023 found that at least 54 local authorities in England and Wales are funding or commissioning immigration legal advice in some form.<sup>3</sup>

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#### Notes

- 1 No Recourse to Public Funds Connect data report 2021-22.
- 2 We surveyed legal providers, practitioners and representative bodies. The survey was open between 23 June and 21 July 2023.
- 3 Jo Wilding, *Local authority funding for immigration legal advice in the UK*, Justice Together, May 2023.

Source: No Recourse to Public Funds Connect data report 2021-22; National Audit Office consultation on legal aid, July 2023; Jo Wilding, *Local authority funding for immigration legal advice in the UK*, Justice Together, May 2023

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## Addressing unintended cost impacts of the reforms

### Exploring the benefits of early legal advice

**1.12** MoJ acknowledges the possibility that the removal of legal aid for early advice in some categories of law may have either increased its own costs by allowing issues to escalate and become more costly or passed costs onto other government bodies. In its 2019 review, MoJ noted stakeholders' concerns that legal aid scope reductions had reduced opportunities for early intervention and limited providers' ability to provide comprehensive support. However, as MoJ had not assessed the expected impact of the reforms, it argued that it required more research to understand and quantify the impact of earlier intervention.

**1.13** In July 2020, MoJ secured £5 million funding for a pilot scheme to test the costs and benefits of providing early legal advice through legal aid. The pilot sought to recruit people with council tax arrears to the scheme, as MoJ judged that this population was more likely to also have other legal issues. MoJ launched the pilot in October 2022, two years after the funding, because it had to pass new legislation allowing funding for the scheme, and because it took time to agree the approach and data-sharing arrangements with local authorities. However, MoJ has made no progress in quantifying the costs and benefits of early legal advice because it recruited just three participants against a target of 1,600. It believes that the low uptake was because the recruitment method relied on local councils to promote engagement by letter, but individuals were reluctant to engage with council correspondence due to their council tax arrears. MoJ estimates it spent £1.1 million of the original £5 million funding. It told us that, despite the low uptake, the pilot helped clarify gaps in its understanding, for example, the importance of appropriate communication. MoJ does not currently plan to continue or attempt to repeat the pilot in its current form, but it has committed to testing the impact of early advice in private family law (see paragraph 1.19). In August 2023, MoJ launched a new Housing Loss Prevention Advice Service, which provides early legal advice in relation to housing, debt and welfare benefits issues to those with written evidence showing they are at risk of losing their home.

### Impact of reforms on self-representation in courts

**1.14** By reducing the scope of cases eligible for legal aid, MoJ aimed to discourage unnecessary litigation and reduce the number of court cases. However, it also acknowledged that individuals may opt to represent themselves in court (called litigants-in-person) if they can no longer receive legally aided services. In family law, MoJ set a specific aim to divert couples who were in dispute over contact with children or division of assets to mediation instead of court.

#### **Litigants-in-person trends**

**1.15** Since 2013 the number of litigants-in-person in family courts has increased significantly. Between January and March 2023, the proportion of cases in private family law where neither the applicant nor respondent had legal representation was 40%, an increase from 14% on the same period in 2013.<sup>5</sup> We previously reported MoJ did not anticipate that withdrawing most funding for solicitor consultations – the most common route of referral to mediation – through LASPO would cause referrals to reduce. It originally expected assessments to increase by around a third. In its 2019 review, MoJ concluded that the LASPO reforms were unsuccessful in diverting cases from family courts to mediation and had instead led to an increase in litigants-in-person. Stakeholders argue that litigants-in-person can increase the duration of a case, using more court resources and reducing availability.

<sup>5</sup> Private family law refers to cases where two or more parties are trying to resolve a private dispute. This is commonly where there is a disagreement about who the children of parents who have separated should live with, and have contact with.

**1.16** Stakeholders have also raised concerns around a possible increase in litigants-in-person in magistrates' courts, which hear less serious criminal cases. For example, Magistrates' Association surveys indicated an increase in the number of litigants-in-person between 2014 and 2017. They highlighted potential reasons for the increase, including insufficient duty solicitors, difficulties passing the merits test for legal aid, and difficulties proving eligibility for legal aid if a custodial sentence is deemed unlikely. HM Courts & Tribunal Service's (HMCTS's) understanding of the impact of litigants-in-person is limited as it does not monitor data on self-representation in magistrates' courts due to complexities in the data. The Centre for Public Data has estimated that, between January and June 2023, 48% of defendants appearing in magistrates' courts charged with non-motoring imprisonable offences did not have legal representation at any hearing.<sup>6</sup>

### **Impacts of litigants-in-person**

**1.17** To date, MoJ and HMCTS have shown limited curiosity in improving their understanding of the extent to which litigants-in-person may create inefficiencies. Their research is limited to ad-hoc analyses of hearing durations in family courts in 2014 and 2018. The latest research in 2018, found that all private family law cases took longer in 2018 than in 2014, regardless of representation, although increases were higher in cases where both or only one party had representation compared to those where neither did. However, MoJ and HMCTS have not done any research since then and limitations in HMCTS's data mean this analysis does not allow them to accurately understand the impact of litigants-in-person. This is because the analysis is based on estimated hearing lengths (HMCTS does not record actual hearing lengths) and does not control for the impact of case complexity on case duration. The Law Society also raised concerns that the data do not distinguish between 'active' litigants-in-person and those who do not participate in proceedings.

<sup>6</sup> Analysis based on data released for a Parliamentary Question. Data are management information and are not subject to the same level of checks as official statistics. The data only include cases on the common platform system. Analysis only included defendants charged with summary only, imprisonable, non-motoring offences.



**Reducing self-representation by diverting people from courts**

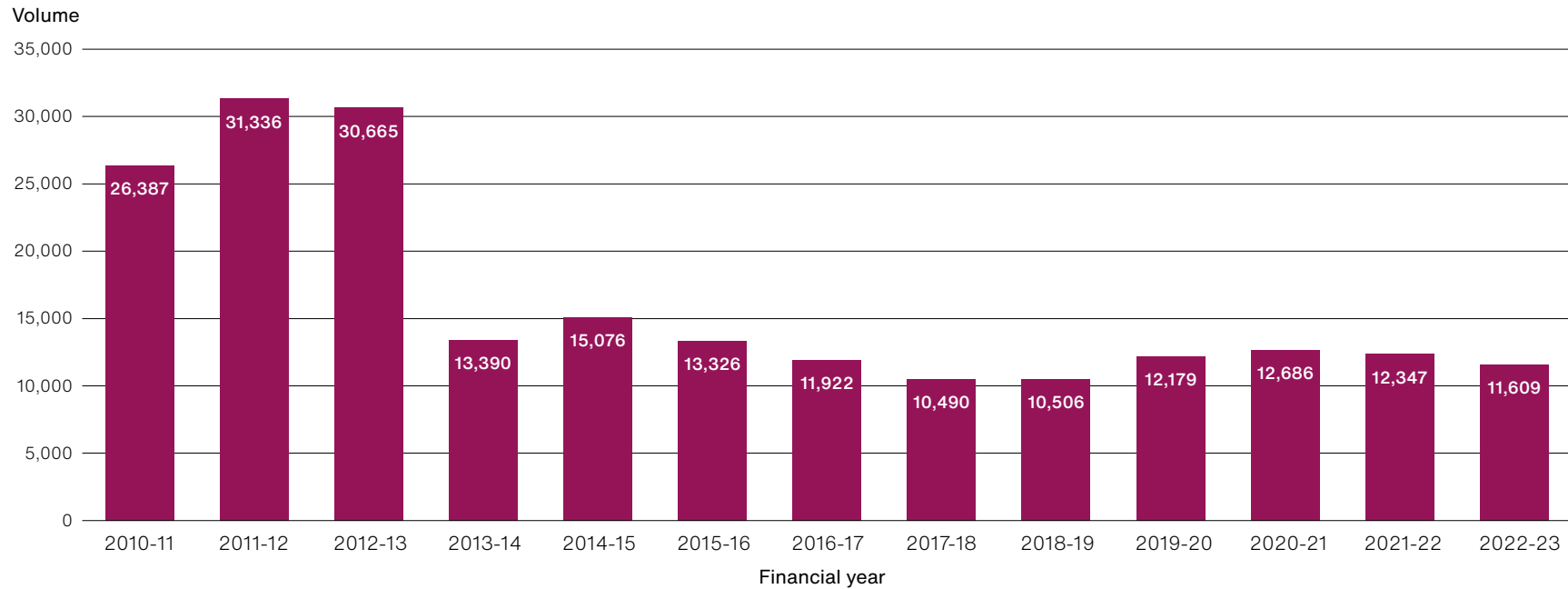
**1.18** Following our 2014 report on civil legal aid, MoJ sought to increase mediation assessments to reduce pressures on family courts. In 2014, it introduced a requirement for individuals to attend a mediation information and assessment meeting (MIAM) before making certain family law applications. However, a high proportion of applicants claimed exemptions from attending the MIAM, which limited its effectiveness. MoJ launched a voucher scheme to encourage family mediation in March 2021, with the aim of tackling rising court backlogs. MoJ has also funded small-scale schemes to support litigants-in-person in civil and family courts.

**1.19** However, legally aided mediation assessments have not returned to pre-LASPO levels. The average number of assessments since 2013-14 is around 40% of the 2012-13 level (**Figure 5** overleaf). Due to increasing pressures on family courts, in March 2023 MoJ consulted stakeholders on proposals to mandate mediation for private family law cases. Its January 2024 consultation response set out that it has chosen not to do so. Instead it committed to exploring other ways to help families resolve issues earlier, for example, through testing the impact of funded early legal advice for families in private law. It estimates that the average savings per case diverted from family courts to mediation is around £1,700 per child arrangement case, and £800 for cases where the divisions of assets are contested.

**Figure 5**

Legally aided family mediation assessments, 2010-11 to 2022-23

The number of legally aided mediation assessments fell significantly in 2013-14, the first year following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and have remained below the pre-LASPO levels since then



**Notes**

- 1 A mediation assessment is an initial meeting between one or both parties and a mediator, to see if an issue can be mediated rather than going to court.
- 2 24,000 people accessed the Ministry of Justice's (MoJ's) mediation voucher scheme between March 2021 and December 2023. MoJ's analysis of the first 7,214 families using the scheme found that the majority of users were not eligible for legal aid (67%). One party was receiving legal aid funding in a further 29% of cases. This suggests that there may be a small number of people who would qualify for legal aid but have instead used the voucher scheme and so are not included in legal aid mediation statistics.

Source: National Audit Office analysis of Legal Aid Official Statistics

## Part Two

### Targeting legal aid at those who need it most

**2.1** This part of the report examines the Ministry of Justice's (MoJ's) success in meeting the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) reforms' objectives of discouraging unnecessary litigation at public expense and targeting legal aid at those who need it most.

#### **MoJ's success in targeting legal aid at those who need it most**

**2.2** In the LASPO reforms, MoJ aimed to discourage unnecessary litigation and to 'target legal aid to those who need it most' by:

- reducing the scope of civil legal aid and focusing it on areas it considered to be the highest priority; and
- tightening financial eligibility criteria (see paragraph 1.5).

#### Understanding the impact of legal aid scope reductions on access to justice

**2.3** In its 2019 review of the impacts of the LASPO reforms, MoJ assessed whether scope reductions were having the intended effect by analysing whether the number of cases funded by legal aid in various categories of law had matched its expectations. It found that, in categories such as immigration and education, it had successfully prioritised support. For example, MoJ intended to focus education-related legal aid support on those with special educational needs (SEN), and the percentage of education legal help cases involving SEN increased from 34% in 2012-13, to 70% in 2017-18.<sup>7</sup> However, in other categories, such as social welfare law (debt, housing, welfare benefits and employment) it found that volumes of cases funded by legal aid declined more than anticipated. MoJ suggested this could be partly due to people not understanding their eligibility for legal aid.

<sup>7</sup> Legal help refers to legal aid in relation to advice and support provided for a non-criminal legal issue, excluding representation or advocacy in proceedings.

**2.4** In its 2019 review, MoJ also looked at how the characteristics of those accessing legal aid had changed following the reforms. It found small increases in the proportion of individuals with protected characteristics accessing legal aid. For example, a three percentage point increase (18% to 21%) in ethnic minorities receiving legal help between 2012-13 and 2017-18. However, MoJ did not compare these changes to its aspirations, and the proportion of those with no reported ethnicity increased from 11% to 20% over the same period, making comparison difficult. It also noted stakeholder concerns that LASPO scope reductions adversely affected marginalised groups. For example, Shelter reported that vulnerable clients could only receive legal aid for a subset of their issues, but their problems were often interrelated.<sup>8</sup> MoJ's 2019 review did not assess the impact of LASPO on those who could no longer access legal aid, but in its 2019 Legal Support Action Plan, it described how it would assess this in future to ensure legal aid for the most vulnerable.

**2.5** MoJ has reintroduced some specific areas of law into scope for legal aid in response to concerns over access to justice raised in its reviews and by other stakeholders (**Figure 6** on pages 27 and 28). For example, in October 2019, MoJ allowed legal aid for separated migrant children for citizenship and non-asylum immigration applications and appeals. This followed concerns raised in a judicial review claim around children's vulnerabilities.

### Financial eligibility for legal aid

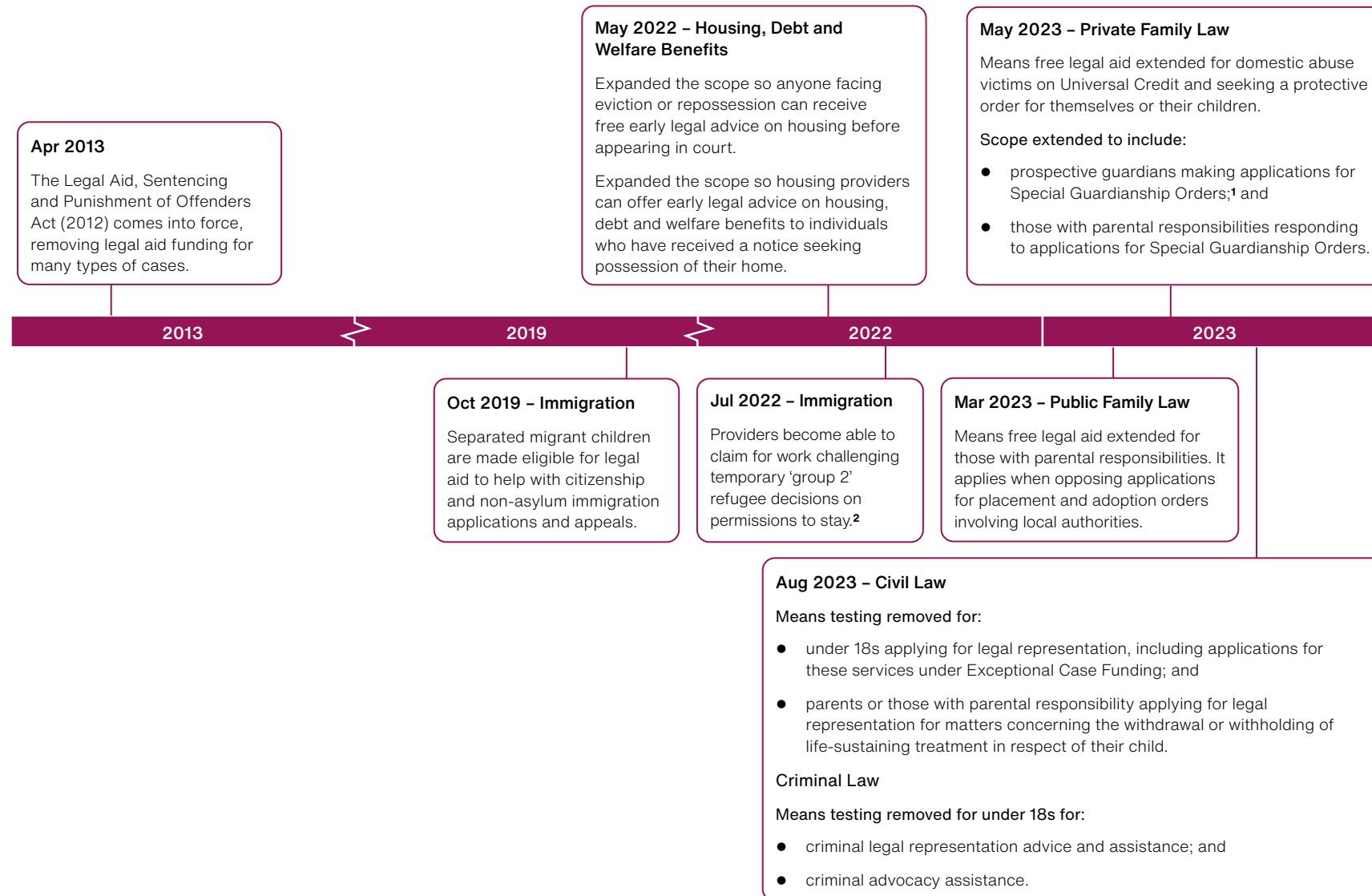
**2.6** Financial position is a key factor in legal aid eligibility decisions. As described in Figure 1, the LASPO reforms amended some financial eligibility criteria for legal aid but did not fundamentally change existing thresholds, nor did they create mechanisms to review financial eligibility thresholds routinely. For example, since 2009, anyone earning over £31,884 has not been eligible for legal aid for civil cases, unless they are in receipt of certain benefits such as Universal Credit. The static earnings threshold compared to general inflation means that, each year, a reducing proportion of people have been eligible for legal aid. In 2012-13, around 73% of UK income taxpayers had an income below the gross income threshold for civil legal aid and 53% had an income below the magistrates' court gross income threshold. By 2020-21 this had fallen to around 62% and 37% respectively.

<sup>8</sup> Shelter is a charity supporting individuals with housing issues.

## Figure 6

### Changes to legal aid scope from 2013 to 2023

Some types of cases that were removed from scope by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 have since been returned into scope



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**Figure 6** *continued*

## Changes to legal aid scope from 2013 to 2023

**Notes**

- 1 Special Guardianship is an order made by the Family Court that places a child or young person to live with someone other than their parent(s) on a long-term basis.
- 2 Group 2 refugees are a tier of refugees introduced by the Nationality and Borders Act 2022, who are granted temporary permission to stay for 30 months.
- 3 This is not an exhaustive list of changes made to legal aid scope.

Source: National Audit Office analysis of Ministry of Justice policy documents and announcements

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**2.7** MoJ announced a means test review of eligibility thresholds in February 2019, as part of its Legal Support Action Plan. This followed stakeholder concerns about the impact of the static thresholds. In May 2023, following a public consultation, MoJ proposed several changes including:

- increased income and capital thresholds in civil legal aid, so that those with below median household income and capital will be eligible;
- increased income thresholds in Crown Court and magistrates' courts;
- removing the means test for some types of civil case, such as legal representation for children; and
- removing the upper disposable income threshold for Crown Court cases, so that everyone will be entitled to legal aid regardless of earnings, subject to individuals making contributions.

In total, MoJ estimates that the changes will result in more than 2.5 million additional people in England and Wales being eligible for civil legal aid, 3.5 million more people being eligible for legal aid at magistrates' courts, and all individuals becoming eligible for legal aid at Crown Courts.

**2.8** MoJ has made some minor changes already. For example, in August 2023, it removed means testing for children applying for legal representation. However, in May 2023, MoJ announced that the remaining changes would not come into force until 2025. The timetable has been affected by complexities in updating the Legal Aid Agency's (LAA's) ageing digital infrastructure and the time required to develop, agree and make changes resulting from the Illegal Migration Act 2023. The new thresholds are currently based on 2019-20 data, so risk being out of date when they are introduced as average earnings increased by a quarter between April 2020 and October 2023. MoJ intends to consider the new income and capital thresholds again prior to implementation and then within three to five years of fully implementing the above planned changes.

## Access to legal aid for those that are eligible

**2.9** Ultimate responsibility for ensuring access to justice rests with MoJ and the Lord Chancellor, who must ensure that those who are eligible for legal aid can access it. Delivering swift access to justice is also one of MoJ's three key priorities. While one of LAA's three strategic objectives is delivering access to justice, its performance indicators on access focus on its operational processes, such as time to process applications or answer customer calls. The NAO's guide to *Improving operational delivery in government* recommends performance information should include a balance of quality, people, cost and output measures.<sup>9</sup>

### MoJ and LAA's approach to monitoring access to justice

**2.10** MoJ and LAA do not estimate overall demand for legally aided services. LAA forecasts expenditure on legal aid for budgeting purposes, incorporating external factors such as court backlogs and policy changes. However, this cannot give MoJ a view of the extent to which people may need to, and be eligible to, access legal aid. We recognise that assessing demand is inherently challenging. Nevertheless, there are examples of how MoJ and LAA could estimate this. For example, LAA's predecessor, the Legal Services Commission, used to run surveys to estimate demand but, following the LASPO reforms, MoJ took responsibility for any future surveys, and it has not yet carried out any similar work. An academic has also previously used published statistics to estimate demand for legally aided services for immigration cases.<sup>10</sup>

**2.11** LAA instead aims to mitigate the risk of unmet need by setting minimum thresholds for provision, however, the rationale for this is not clear in most cases. In civil law, the threshold is based on procurement areas, which are the areas LAA uses to procure legal services. These differ by category of law and are geographic regions based loosely around other associated services such as local authority boundaries. LAA states that there must be at least one provider per procurement area for each category of civil law except for family, which must have at least five to avoid conflicts of interest in family disputes. This criterion has historically been satisfied with a small number of exceptions, such as gaps in provision of on-the-day eviction advice since at least September 2018. In 2022-23, 40% of procurement areas for debt and housing law had only one contracted firm. In criminal law, LAA procures contracts based on the locations of courts and police stations, as this is where most of the work will occur.

**2.12** LAA also produces quarterly capacity reviews to monitor emerging capacity risks. The reviews bring together management information on provider and office numbers and volumes of work completed, narrative informed by internal expertise and contract managers, and external perspectives from providers and stakeholders. The LAA executive team reviews this quarterly and discusses potential resulting interventions.

9 National Audit Office, *Improving operational delivery in government: A good practice guide for senior leaders*, March 2021.

10 Dr Jo Wilding, *No Access to Justice: How legal advice deserts fail refugees, migrants and our communities*, Refugee Action, May 2022.

**2.13** We identified several limitations to the information that LAA collects, which impact its ability to gain a robust view of whether there is likely unmet need for legally aided services. Issues include the following:

- **Changes in the geographical coverage of procurement areas risk masking potential gaps in local provision:** In some cases, LAA has increased the geographic size of procurement areas over time. LAA told us this can be to increase commercial viability for providers via higher case volumes. For example, in 2013-14, there were 101 procurement areas covering England and Wales for community care law, of which 19 were not meeting the minimum threshold, but by 2022-23 there were only 12 procurement areas, all of which met the threshold. LAA acknowledges that these changes risk masking gaps in local provision as the minimum threshold becomes easier to meet.
- **A lack of routine data on whether providers' capacity limits access to legal aid:** Firms contracted to provide legally aided services are not obliged to take on a minimum volume of work. LAA monitors the new cases started to capture the volume of work that providers take on. However, it does not collect routine data on reasons for low or no activity, such as lack of demand or capacity. Furthermore, some advocacy groups report to LAA that individuals they support are unable to secure legally aided services. LAA acknowledges this is likely to understate any capacity issues since organisations may not report this when it occurs, and providers may not report to LAA when they turn clients away.
- **Whether access is limited by providers being selective in the cases they accept:** Through our consultation and stakeholder interviews, we heard that providers may 'cherry pick' cases, and only take on cases which are either straightforward and therefore more economically viable as less work is required for a fixed fee, or where the consequences of having no legal support would be especially serious. Therefore, even in areas where providers are active, an eligible individual may not be able to access legally aided services. LAA told us that providers being selective in this way was against the terms of the contract, but it was difficult to monitor whether it was happening.

**2.14** We have seen limited evidence of MoJ proactively seeking data or assurance that it is meeting its access to justice obligations. LAA has channels through which it can raise concerns around access to justice with MoJ. For example, the risk that gaps in provision arise and prevent access to justice is on LAA's corporate risk register and is recognised as being jointly held with MoJ. However, it is not on MoJ's risk register (see paragraph 3.2 for details of LAA's and MoJ's roles in ensuring access to justice). In March 2023, MoJ and LAA set up a joint working group to ensure closer coordination of operational and policy tools to address this risk. However, as MoJ and LAA do not have a clear picture of either demand or capacity, MoJ cannot gain a robust view of access to justice risks from this information.



## Local availability of legal aid services

**2.15** A natural consequence of reductions in the scope of legal aid was a likely reduction in the number of firms providing legal aid services, as the market adapted to fewer cases being eligible. Between 2012-13 and 2022-23, the number of provider offices completing legal aid work fell by 40% for civil law and by 22% for criminal law. The more significant fall in offices for civil law compared to criminal law is explained by the greater reductions in scope for the former.

**2.16** The downward trend in the number of legal aid provider offices persisted after the first few years of the reforms (**Figure 7** overleaf), indicating there may be other factors driving the decline beyond the initial market adjustments to LASPO. LAA suggests market consolidation, whereby fewer firms employ a large number of people for efficiency purposes, could be an explanation for the continued decline in providers but does not have data to support this. However, having reviewed statistics produced for the *Independent Review of Criminal Legal Aid* on the size of criminal legal firms between 2014-15 and 2018-19, we found no shift in the market share of larger firms. There are no similar datasets for civil law, but MoJ is considering producing these as part of its current civil legal aid review. Respondents to our consultation argued that static fees are decreasing the economic viability of legal aid work, causing firms to leave the market.

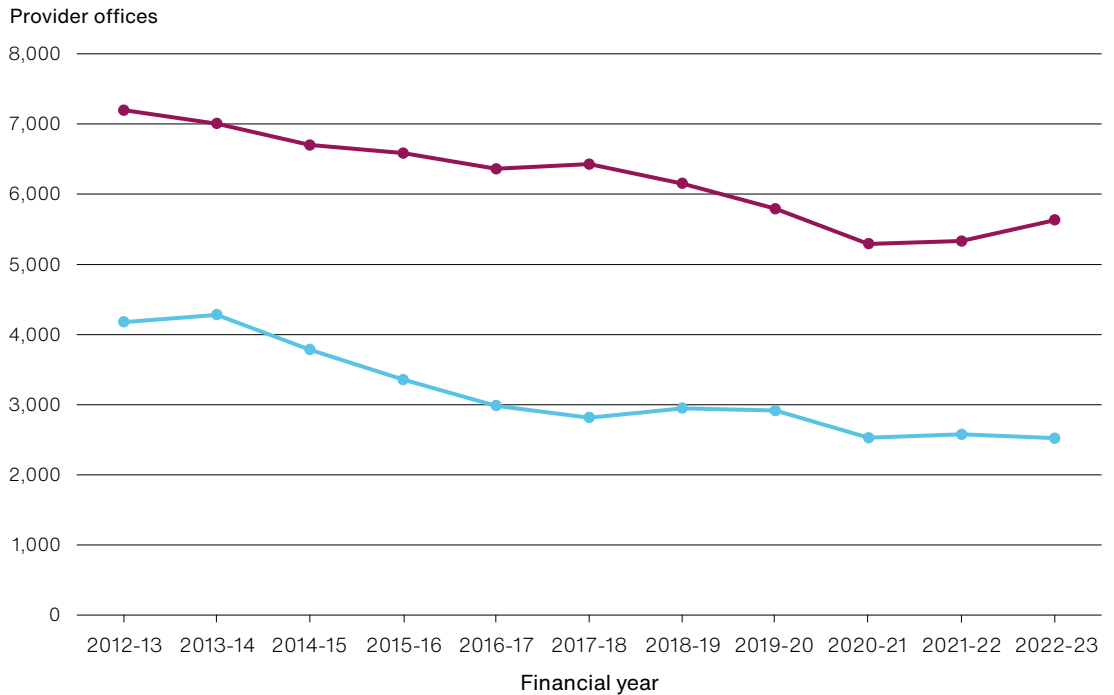
**2.17** To better understand the impact of the reduction in provider offices on the accessibility of legal aid, we analysed changes in the proportion of the population within five and 10 kilometres of civil legal aid offices. We chose these distances, as five kilometres is approximately an hour's walk, therefore anyone living beyond this distance is likely to require access to a car or public transport to reach the office. A commissioning review for LAA highlighted the need to be mindful that not all clients will be able to access out-of-town services owing to the cost and availability of public transport. The narrowed scope of legal aid also means that many people requiring legal aid are more likely to be in more vulnerable situations, for example, those facing eviction. MoJ and LAA use definitions of minimum provision rather than travel distance as a metric for assessing access to justice, but as explained in paragraph 2.13, these measures have changed significantly over time in terms of the geographic area covered, so we could not use these data.

**2.18** Our analysis shows that the reduction in offices has left a smaller proportion of the population than previously within five and 10 kilometres of civil legal aid offices in most categories of law (**Figure 8** on pages 33 and 34). Moreover, the number of local authorities with no office has increased in most categories of civil law. For example, in housing law, 136 local authorities in 2013-14 did not have a locally based office providing legal aid, but this had increased to 183 by 2022-23. For multiple areas of the country, the nearest housing legal aid office is now more than 20 kilometres further away than it was in 2013-14, including parts of the South West and the North West (**Figure 9** on pages 36 and 37). Respondents to our consultation told us that the trend towards more sparsely distributed providers is leaving eligible individuals unable to access legally aided services.

**Figure 7**

Number of provider offices completing legal aid work, 2012-13 to 2022-23

Over the last 10 years, in both civil and criminal law, there is an overall downward trend in the number of legal aid provider offices completing work



● Criminal	7,198	7,006	6,701	6,585	6,361	6,428	6,153	5,791	5,294	5,332	5,631
● Civil	4,178	4,282	3,783	3,357	2,986	2,816	2,947	2,915	2,526	2,577	2,520

**Notes**

- 1 A provider who is contracted by the Legal Aid Agency may have more than one office, each office is counted separately.
- 2 Provider office details are not available for central funds, Court of Appeal, Supreme Court, discretionary payments, and telephone data in crime lower and legal help.
- 3 While the number of providers might reduce throughout the contract period as providers consolidate and merge or exit the market completely, the number of providers can only increase at defined points when contracts are retendered.

Source: National Audit Office analysis of Official Legal Aid Statistics













**2.19** This analysis may underestimate distances as it does not take account of offices that are unable to take on casework due to a lack of capacity. In only three out of 12 law categories are the majority of offices actively taking on legal aid cases, according to the definition used by the LAA (Figure 10 on pages 38 and 39).<sup>11</sup> In 2022-23, in all civil law categories except family and mental health, at least one in 10 contracted offices took on no cases. We found distances increase in all categories of law if only looking at active offices. For example, in housing law, 64% of the population in England and Wales were within 10 kilometres of an office in 2022-23 (compared to 73% in 2013-14), but this falls to 57% when only including active offices. LAA does not monitor whether providers taking on low volumes of cases is due to lack of capacity or demand (see paragraph 2.13).

11 The LAA defines a firm as active if it has more than 30 new matter starts and/or certification applications in the year.

## Figure 8

Percentage of population within 5 kilometres and 10 kilometres of nearest legal aid office, by category of law, 2013-14 to 2022-23

The decline in offices since 2013-14 means that, in most categories of law such as housing, immigration and family law, a smaller proportion of the population are within 5 kilometres or 10 kilometres of their nearest legal aid office

Category of law	Total number of cases funded by Legal Aid Agency, 2022-23	Within 5 kilometres		Within 10 kilometres	
		Percentage of population within 5km of nearest legal aid office, 2022-23	Percentage point change from 2013-14	Percentage of population within 10km of nearest legal aid office, 2022-23	Percentage point change from 2013-14
		(%)		(%)	
 Family	115,142	75	▼ 4	90	▼ 2
 Immigration Asylum	48,097	32	▼ 7	47	▼ 7
 Mental Health	34,693	32	▼ 4	53	▼ 7
 Housing	28,849	45	▼ 10	64	▼ 9
 Discrimination	3,934	9	N/A	19	N/A
 Public Law	3,340	23	▲ 1	37	▲ 0.1
 Community Care	3,244	25	▼ 5	41	▼ 6
 Claims Against Public Authorities	1,748	22	▲ 4	37	▲ 2
 Education	1,480	10	N/A	21	N/A
 Debt	568	45	▼ 11	64	▼ 10
 Clinical Negligence	170	28	▼ 11	50	▼ 12
 Welfare Benefits	84	17	▲ 11	28	▲ 14

**Figure 8** *continued*

Percentage of population within 5 kilometres and 10 kilometres of nearest legal aid office, by category of law, 2013-14 to 2022-23

**Notes**

- 1 We extracted data on postcodes of legal aid providers over time. We then calculated the straight line distance between the population weighted centroid of each Output Area in England and Wales and the nearest office postcode for each category of law (Output Areas are a geographical way of breaking up the UK and are the lowest level of geographical area for census statistics). The population of each Output Area was then analysed in order to calculate the percentage of the total England and Wales population that were within 5 kilometres and 10 kilometres from their nearest legal aid office.
- 2 Percentage point change from 2013-14 is based on comparing mid-2021 population estimates and 2021 population-weighted centroids with mid-2013 population estimates and 2013 population-weighted centroids from Office for National Statistics Census data. Mid-2021 population estimates are the latest available population estimates at time of analysis.
- 3 The change over time in the percentage of the population within the distance threshold may also be attributed to other factors such as population change. These factors have not been considered in this analysis.
- 4 N/As (not applicable) for discrimination and education are because there are no 2013-14 data, as the Legal Aid Agency did not procure contracts in discrimination and education in 2013-14.
- 5 Crime is not included in the table as solicitors generally travel to meet clients in a criminal case, for example, visiting a client at a police station or court.
- 6 Claims against public authorities, public law and welfare benefits all saw increases in offices since 2013-14, which is why the percentages improved in these categories of law.
- 7 We only include offices with a live contract at the end of 2013-14 and 2022-23.
- 8 Total number of cases funded by the Legal Aid Agency is the sum of the workload for legal help and civil representation.

Source: National Audit Office analysis of Legal Aid Agency provider data

**2.20** The absence of a local provider does not automatically prevent someone accessing legal aid support. Firms can provide some advice remotely and LAA also provides civil legal advice through a telephone helpline, if the applicant is eligible and the matter is in scope. However, legal aid contracts require providers to have an office in the contracted location, and LAA told us that it would not expect people to travel to providers based far away. MoJ acknowledges that remote advice will not be appropriate for all, particularly vulnerable adults, and is not a replacement for face-to-face legally aided services. In some areas, such as housing, LAA has tendered for digital and outreach-only contracts where it has been unable to maintain face-to-face provision, for example, in Cornwall and parts of the Midlands.<sup>12</sup> LAA does not collect reliable data on the extent to which firms are providing services remotely.

**2.21** MoJ and LAA recognise that there are some areas of England and Wales where there may be unmet need in certain categories of law, including the following.

<sup>12</sup> Digital and outreach-only contracts waive the requirement for providers to have a physical office in a procurement area, allowing them to work either digitally or via an office in a different procurement area.

- **Duty solicitors in police stations and courts:** LAA provides legal aid for those arrested or charged with a criminal offence via its duty solicitor schemes. The number of active duty solicitors has decreased by 24% between October 2017 and October 2023 (from 5,240 to 3,984). MoJ has identified regions of potential unmet need, where a small number of providers cover large and frequently rural areas, often leading to longer wait times. It is also aware of cases where clients did not take legal advice because of the long waiting time for a solicitor.
- **Immigration advice:** In its capacity reviews, LAA highlights that it received 130 reports between June 2022 and January 2023 from organisations supporting asylum claimants, saying that they were unable to obtain legal aid advice for one or some of their clients. Sometimes this was even after approaching multiple providers.
- **Housing advice:** Since at least September 2018, the Housing Possession Court Duty Scheme has not had contracted legal providers in all procurement areas. In May 2023, eight housing procurement areas out of 134 did not have a provider and the number of providers fell from 300 to 206 between October 2018 and May 2023.

**2.22** MoJ is beginning to explore the effectiveness of providing more legally aided services remotely. It is working to develop a pilot to test the effectiveness of remote legal advice in police stations, to establish when remote legal advice is appropriate, and to try to make duty solicitor schemes more commercially viable.

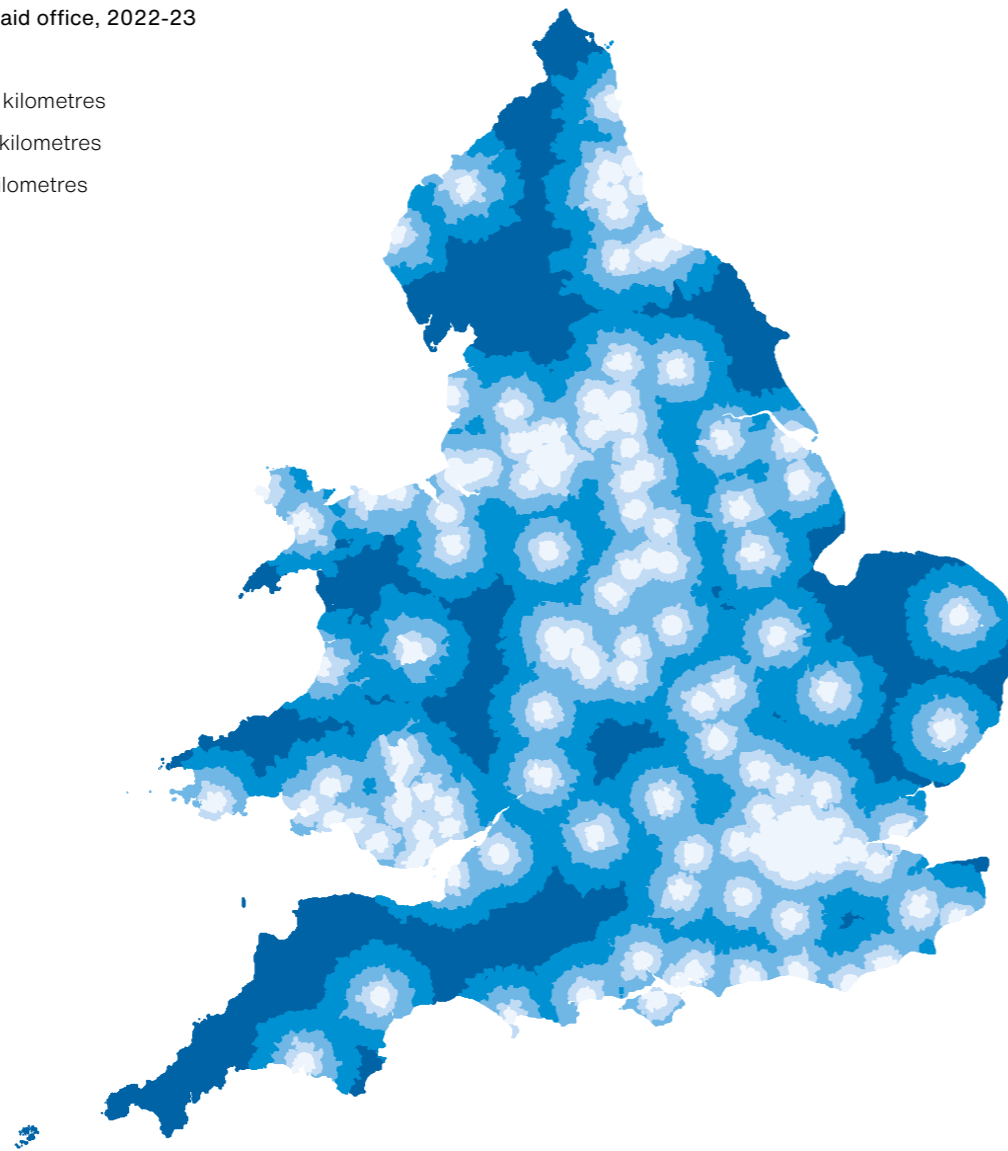
**Figure 9**

Example of geographic access to legal aid: distance to nearest housing office in 2022-23 and change from 2013-14

People living in cities are generally within the closest range of a housing legal aid office, but more remote areas such as Cornwall are more than 30 kilometres from their nearest office. Distance to nearest office has worsened in many parts of the country since 2013-14, such as parts of the South West and the North West

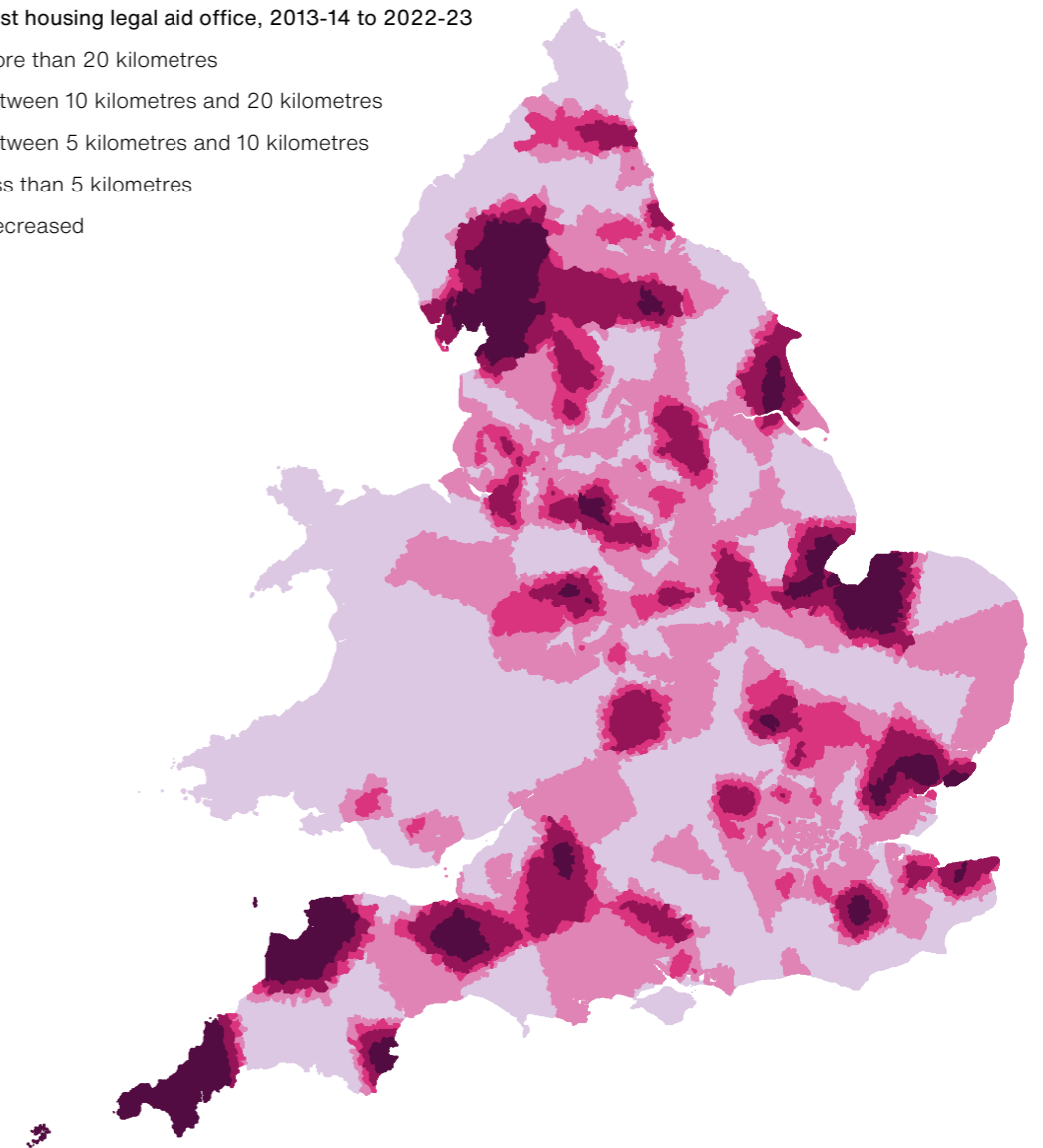
Distance to nearest housing legal aid office, 2022-23

- Greater than 30 kilometres
- Between 20 kilometres and 30 kilometres
- Between 10 kilometres and 20 kilometres
- Between 5 kilometres and 10 kilometres
- Less than 5 kilometres



Change in distance to nearest housing legal aid office, 2013-14 to 2022-23

- Distance increased by more than 20 kilometres
- Distance increased by between 10 kilometres and 20 kilometres
- Distance increased by between 5 kilometres and 10 kilometres
- Distance increased by less than 5 kilometres
- No change or distance decreased

**Notes**

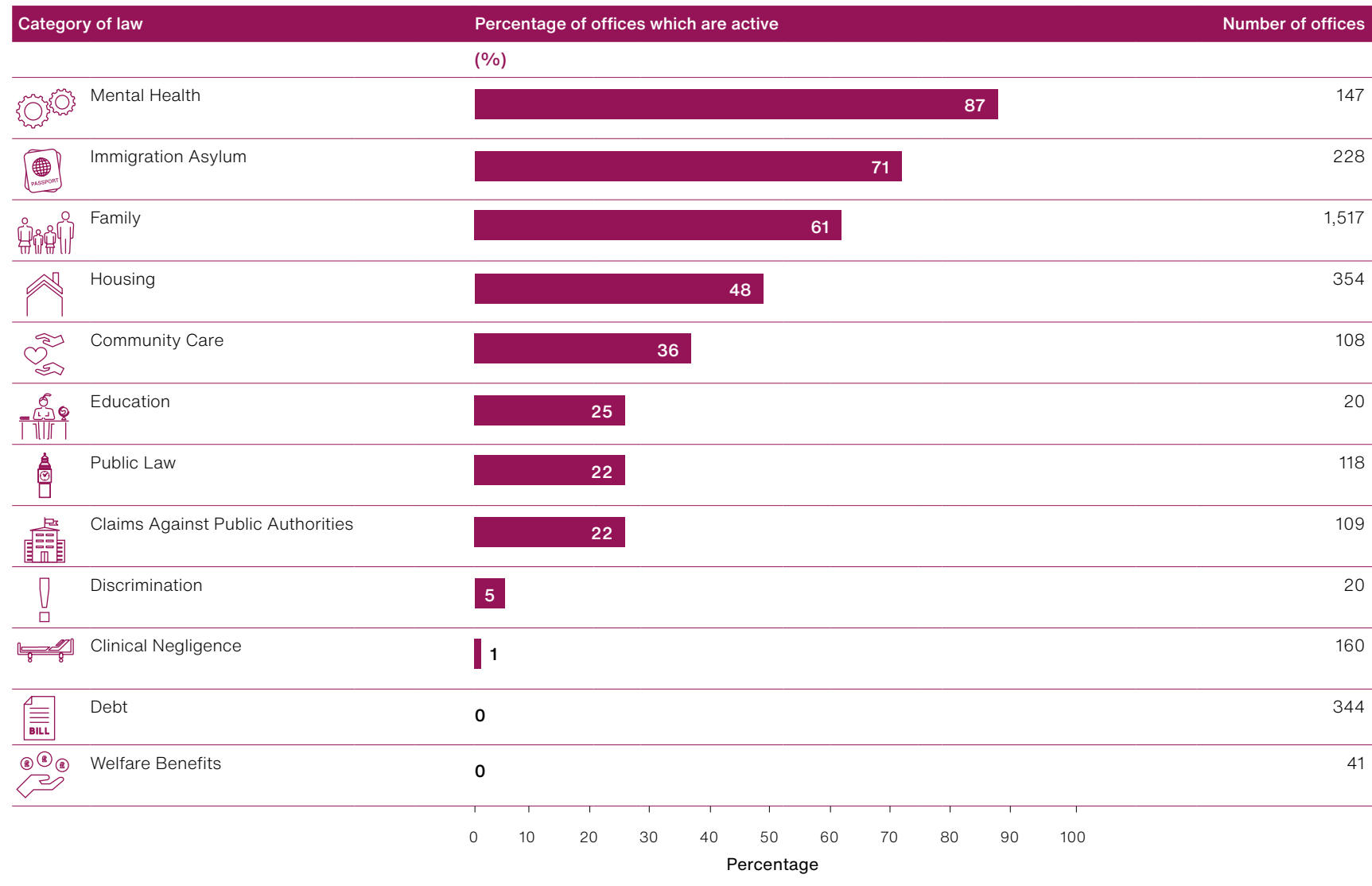
- 1 We extracted data on postcodes of legal aid providers over time. We then calculated the straight line distance between the population-weighted centroid of each Output Area in England and Wales and the nearest office postcode for each category of law (Output Areas are a geographical way of breaking up the UK and are the lowest level of geographical area for census statistics).
- 2 Population for 2022-23 is based on comparing mid-2021 population estimates and 2021 population-weighted centroids and population for 2013-14 is based on mid-2013 population estimates and 2013 population-weighted centroids from Office for National Statistics Census data. Mid-2021 population estimates are the latest available population estimates at time of analysis.

- 3 The Legal Aid Agency has tendered for digital and outreach-only contracts where it has been unable to maintain face-to-face provision, for example in Cornwall. The Ministry of Justice acknowledges that remote advice will not be appropriate for all, particularly vulnerable adults.
- 4 We only include offices with a live contract at the end of 2013-14 and 2022-23.

**Figure 10**

Percentage of offices that are active, by category of law, 2022-23

In only three out of twelve categories of law are a majority of offices active



**Figure 10** *continued*

Percentage of offices that are active, by category of law, 2022-23

**Notes**

- 1 Active status is calculated according to the Legal Aid Agency's definition, which is a provider with more than 30 new matter starts and/or certificate applications in the financial year.
- 2 We only include offices with a live contract at the end of 2022-23. The number of offices is a total across both legal help and civil representation.
- 3 The Legal Aid Agency says the low activity rates for debt and clinical negligence may be influenced by the very limited circumstances in which legal aid is available for these categories of law.

Source: National Audit Office analysis of Legal Aid Agency provider data

**Effectiveness of the exceptional case funding scheme**

**2.23** MoJ introduced a new exceptional case funding scheme, as part of LASPO, which replaced the previous scheme. The scheme is administered by LAA. It funds cases that would normally not be eligible for civil legal aid due to not being in scope, but where a failure to provide legal aid support would breach or risk breaching an individual's human rights or EU law, or for inquest cases with a wider public interest determination. As such, this scheme can act as a backstop for people seeking access to justice. Applications for the scheme can be submitted by an individual or a legal aid provider.

**2.24** Stakeholders have reported that exceptional case funding is inefficient and restricts access to justice in some cases, despite some improvements made after the new scheme was introduced. In 2015, in response to court action regarding the accessibility of the scheme, MoJ and LAA created a more streamlined application process and new guidance for caseworkers. Following this, both the number of applications and the proportion LAA granted increased. However, respondents to our consultation still identified several continued barriers to people accessing this support, including the following.

- **Barriers to making an application:** Respondents raised that the application process is still complex. As providers are only paid for successful applications, some providers may not support individuals unless they feel certain the application will be successful. Some vulnerable individuals making direct applications may, for example, not have the legal knowledge to demonstrate how their case meets the criteria. Taking an overall average over the period from 2020-21 and 2022-23, on average, LAA granted 20% of applications from individuals, compared to over 80% of applications from assisted individuals and providers.



- **Difficulties in finding a provider:** Respondents raised that those whose direct application is granted may not always find a provider. One-off analysis by LAA found that in 2019-20 13% of applications from individuals or assisted individuals that were approved for exceptional case funding did not subsequently take a case forward with a provider. The analysis did not distinguish between individuals who no longer required representation and those who may not have found a provider to take their case. MoJ has not repeated this analysis to explore potential issues with access to justice.

**2.25** In 2022-23, immigration cases accounted for two-thirds of applications for exceptional case funding (**Figure 11**), with an approval rate of 87% (**Figure 12** on page 42). This approval rate is significantly higher than the average for other categories of law at 46% (Figure 12). The most common type of immigration application is for legal help, such as for leave to remain where an absence of legal aid would breach the applicant's rights under Article 8 of the European Convention on Human Rights.<sup>13</sup> Inquest and family cases are the second and third highest number of applications received, but LAA grants these applications at a significantly lower rate, at 61% and 43% respectively (Figures 11 and 12).

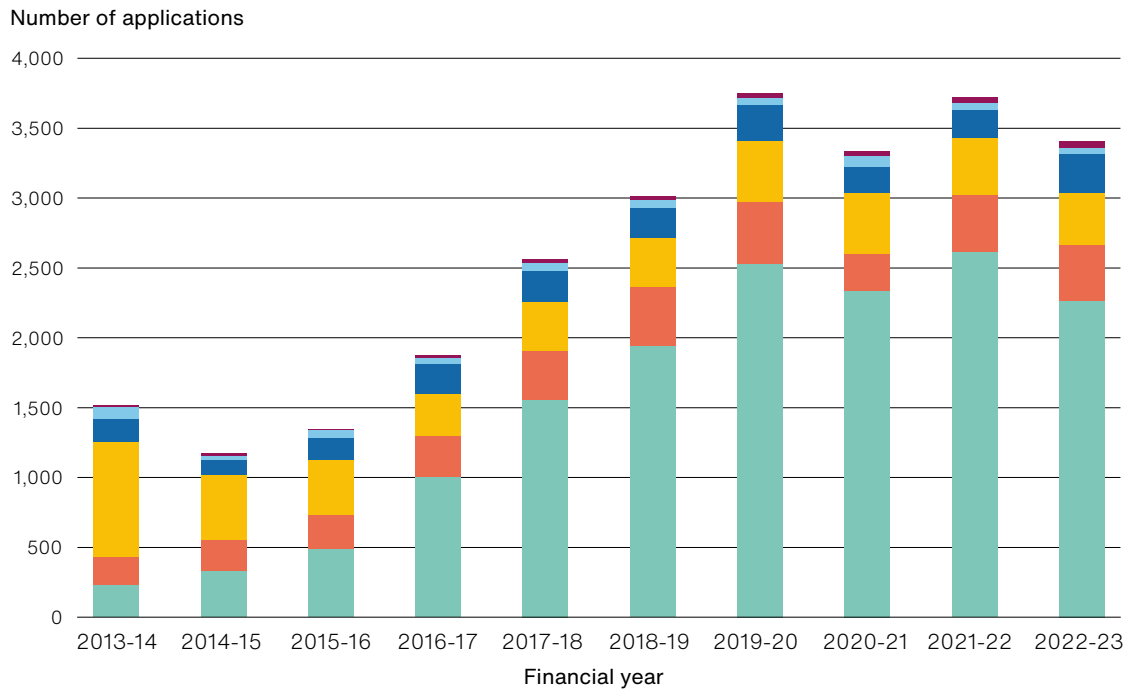
**2.26** The high approval rate for immigration applications suggests that these cases are routinely being funded via legal aid. This raises concerns about access to justice, as the exceptional case funding route is more difficult to access. The high approval rate also raises concerns about value for money, as evidence suggests that processing exceptional case funding applications requires more work for the LAA than a standard application. In 2022-23, LAA processed 83% of applications for exceptional case funding within 25 working days, compared to 93% of applications for standard civil legal aid within 20 working days. It is not possible for the LAA to quantify the costs of processing exceptional case funding cases compared to standard cases as staff do not record how much time they spend on exceptional case funding cases.

<sup>13</sup> Specifically, the right to respect for private and family life.

**Figure 11**

Number of exceptional case funding applications, 2013-14 to 2022-23

Exceptional case funding applications have increased over time, immigration cases made up 66% of exceptional case funding applications in 2022-23



	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Welfare benefits	11	18	7	20	26	25	32	29	41	44
Housing/Land Law	80	29	54	48	51	56	52	76	49	50
Other	171	102	156	210	223	210	256	194	202	274
Family	819	465	394	305	351	355	441	432	405	370
Inquest	201	225	240	288	354	417	443	266	414	404
Immigration	234	334	493	1,008	1,555	1,947	2,527	2,334	2,612	2,264
<b>Total</b>	<b>1,516</b>	<b>1,173</b>	<b>1,344</b>	<b>1,879</b>	<b>2,560</b>	<b>3,010</b>	<b>3,751</b>	<b>3,331</b>	<b>3,723</b>	<b>3,406</b>

**Note**

1 'Other' includes debt, consumer and contract, discrimination, inquiry and tribunals, personal injury and clinical negligence.

Source: National Audit Office analysis of Legal Aid Official Statistics

**Figure 12**

Percentage of exceptional case funding applications approved, 2013-14 to 2022-23

**87% of immigration related applications for exceptional case funding have been approved in the last three years, compared to an average of 46% for all other categories of law**



● Immigration	2	17	66	69	70	79	80	87	87	87
● All categories of civil law excluding immigration	5	21	40	33	33	40	45	43	50	46

**Note**

1 'All categories of civil law excluding immigration' includes debt, consumer and contract, discrimination, family, housing and land law, inquest, inquiry and tribunals, personal injury and clinical negligence, welfare benefits, and other.

Source: National Audit Office analysis of Legal Aid Official Statistics

## Part Three

### Understanding and managing the legal aid market

**3.1** This part of the report examines the Ministry of Justice's (MoJ's) and the Legal Aid Agency's (LAA's) approach to ensuring the sustainability of the legal aid market and outlines future risks to maintaining sufficient capacity to meet demand.

**3.2** Legal aid advice is largely provided through a market of legal firms and third sector organisations. Our previous findings suggest, that while private markets can promote efficiency, they may not naturally provide universal services or equity of provision, and that providers will not offer services unless sufficient financial incentives exist.<sup>14</sup> As a public sector body, MoJ must seek to get value for money from its legal aid funding but its responsibility to ensure access to justice restricts its ability to use many of the normal market management techniques, such as price competition, to do so. MoJ is responsible for ensuring that the legal aid market will continue to provide access to justice for those eligible, for example, it sets the level of provider fees. LAA is responsible for commissioning and administering legally aided services and assisting MoJ in monitoring risks to provision and market sustainability.

**3.3** LAA's procurement process differs from a standard process. It procures legal services from providers using a system of fixed-term contracts. Contracts typically run for three years with an option to extend, which LAA usually exercises. However, there is no price competition as fees are set in legislation, and multiple providers will be successful. Generally, contracted providers are not obliged to take on a minimum level of cases. In civil law, LAA can make payments on account, which remunerate providers in advance of the case being completed, to aid with provider cashflow.

<sup>14</sup> See for example, Comptroller and Auditor General, *Oversight of user choice and provider competition in care markets*, Session 2010–2012, HC 1458, National Audit Office, September 2011; and Comptroller and Auditor General, *Delivering public services through markets: principles of achieving value for money*, National Audit Office, June 2012.

### **Monitoring the sustainability of the market**

**3.4** For a sustainable legal aid market, MoJ and LAA must ensure that there is sufficient, good-quality provision to meet demand and that this remains the case in the long term. In Part Two of the report, we outlined some of the weaknesses in MoJ and LAA's approach to monitoring demand and capacity which limit MoJ's ability to assess whether it is providing sufficient access to legal aid for those eligible.

**3.5** LAA has some processes to gain information on the sustainability of legal aid provision in the longer term. For example, it holds regular meetings with stakeholders for both crime and civil law. These provide a regular forum for LAA to discuss the impact of current fee schemes on providers, collect views on proposed changes to the way legal aid is administered, and receive feedback from providers on the state of the market.

**3.6** However, LAA and MoJ do not have routine access to financial data to allow them to assess sustainability issues before they arise. LAA reviews information on providers' financial positions through its contract management processes to assess the overall health of a provider's finances. But, as providers can undertake both private and legal aid work and the legal aid work rates are fixed, LAA does not have a good understanding of the profitability of a firm's legal aid work or its likely appetite for continuing. LAA could make different contract management choices to improve this. For example, our 2015 report *Open-book accounting and supply-chain assurance* explained that open-book accounting can be a good way to assess the health of a market, as it allows monitoring of the profit made on particular contracts or types of work.<sup>15</sup> MoJ collected information on the profitability of criminal legal aid firms as part of the 2021 Bellamy review and aims to collect similar information in its ongoing Review of Civil Legal Aid, but these are one-off exercises (see paragraph 3.9). MoJ told us that it would welcome greater access to financial information on the relative profitability of legal aid work, but that firms have been reluctant to provide them with this.

<sup>15</sup> Comptroller and Auditor General, *Open-book accounting and supply-chain assurance*, Session 2015-16, HC 91-I, National Audit Office, July 2015.

## Responding to sustainability risks

**3.7** LAA is limited in how it can incentivise providers and respond to sustainability issues. Substantial actions such as fee increases and scope changes are outside its remit and must be addressed by MoJ through legislative change. However, levers LAA can use include the following.

- **Running localised procurement activity to address gaps in provision when they arise:** Firms are usually limited to joining the market or expanding their provision of legal aid at the beginning of a contract period (typically three years). However, where LAA assesses there may be gaps in provision during a contract period, it runs additional procurement activity to ensure it maintains a minimum level of provision (see paragraph 2.11). This is usually if a sole provider in a procurement area withdraws from providing legally aided services during the period, or if no provider is found following an initial tender. However, this has not always been successful or cost effective. For example, LAA ran retendering exercises for 14 schemes between 2018 and 2020 for its Housing Possession Court Duty Scheme (HPCDS), which provides on-the-day emergency support to anyone facing eviction or property repossession, but no provider was found across eight schemes covering 11 courts. LAA acknowledges that additional procurement activity places a high administrative burden on both itself and prospective providers. Data suggest that some firms have an appetite for expanding into different categories of law or opening new offices, as new contract periods do usually see a temporary increase in the number of firms with legal aid contracts (**Figure 13** on pages 46 and 47). However, overall, provider numbers have been decreasing. LAA is currently reviewing whether changes to its procurement model for crime, such as allowing new entrants to join before the end of a contract period, may help to reduce barriers to entry for providers. It intends to consider similar changes to civil procurement pending progress on MoJ's Review of Civil Legal Aid (see paragraph 3.9).
- **Making changes to the administration of legal aid to better incentivise providers to stay in the market:** LAA can make some changes to its contractual terms to benefit providers. This is possible both at the beginning of and during a new contract. For example, in 2023, LAA changed the terms of its 2022 standard crime contract to make opening hours and supervisory requirements more flexible without retendering the contract. However, changes during the contract period cannot be too substantial without the contract being retendered.

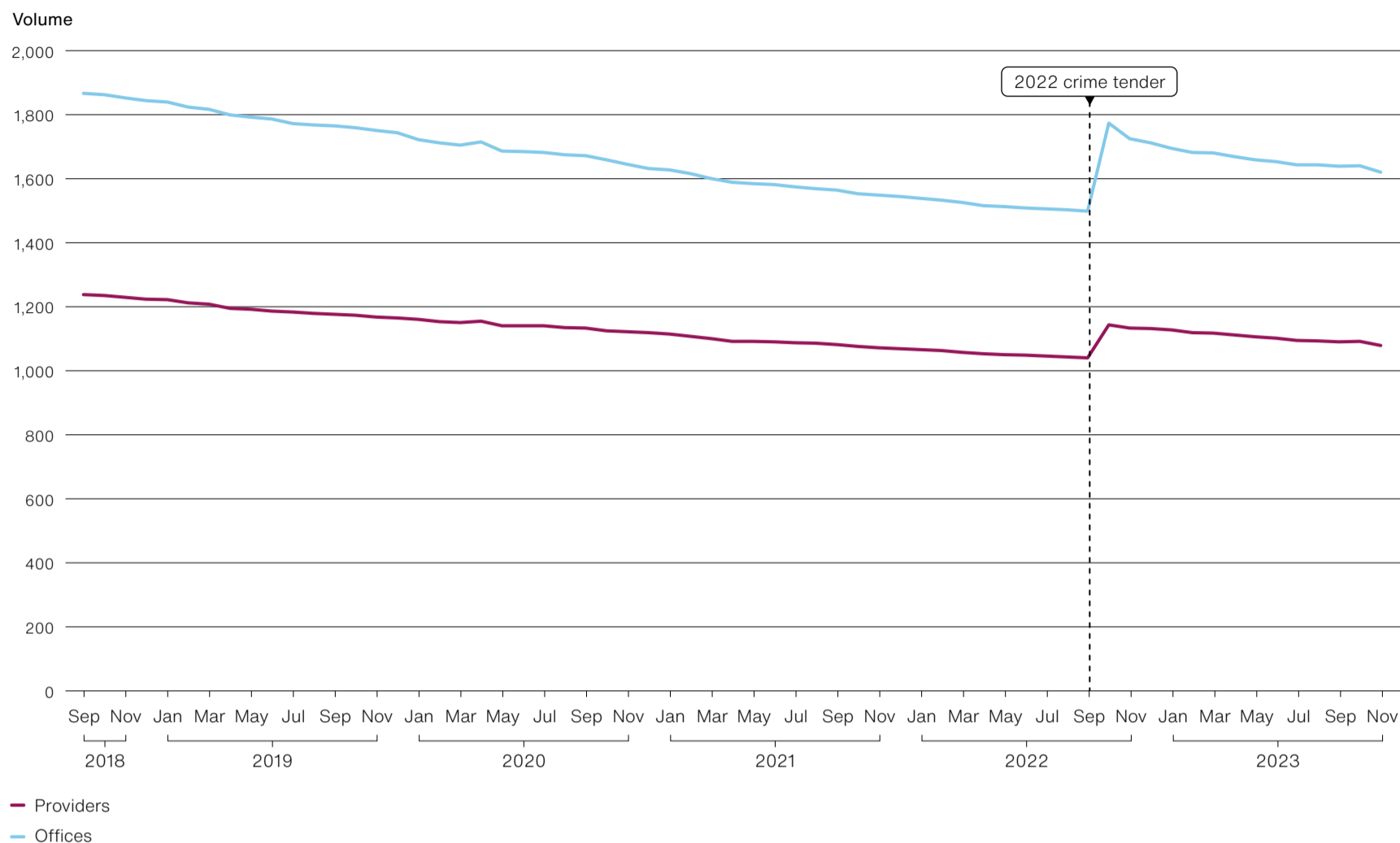
**3.8** MoJ has done some work with LAA to respond to immediate risks to provision that require more substantial interventions, such as policy changes for fee increases or scope changes. For example, in November 2021, in response to being unable to retender HPCDS contracts (see paragraph 3.7), MoJ increased funding for the scheme and developed a replacement Housing Loss Prevention Advice Service. However, these measures have been insufficient to fully address access gaps and, as at December 2023, there was no in-court service available in two courts.

**Figure 13**

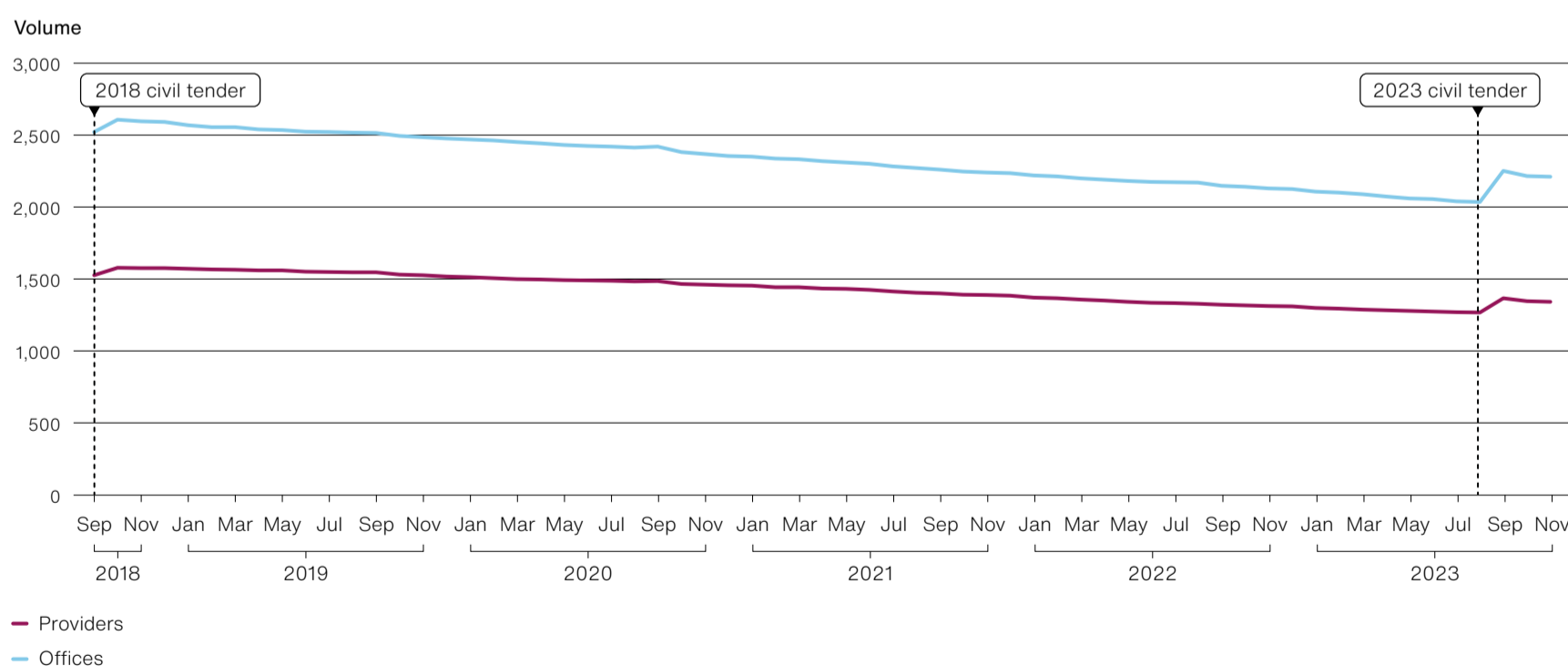
Number of active providers and offices for criminal and civil law, September 2018 to November 2023

The number of active providers tends to decline over the length of the contract, with a boost at the commencement of the new contract

**Criminal law**



**Civil law**



**Notes**

- 1 To provide legal aid services, providers must hold a civil or crime contract. These govern the provision of face-to-face legal aid services for the length of the contract term.
- 2 Civil law includes providers that hold any of the following contracts: standard, housing possession court duty scheme, mediation, and civil legal advice helpline.

Source: National Audit Office analysis of Legal Aid Agency management information

**3.9** Overall, MoJ has been slow to explore and respond to growing concerns around the sustainability of both the criminal and civil legal aid sectors, which have been raised by stakeholders for a number of years. Actions taken by MoJ include the following.

- **Independent Review of Criminal Legal Aid (Bellamy review):** The sustainability of the criminal legal aid sector was considered in Lord Bellamy's 2021 review. MoJ had previously made some cash injections to criminal legal aid. For example in 2018, following barristers' industrial action it increased some barristers' fees, which amounted to an overall increase of around £23 million per year, and announced a comprehensive review of criminal legal aid fee schemes. It also provided up to £51 million per year for solicitors and barristers in 2020 as part of some accelerated aspects of the review. But substantial changes to fees were not made until 2022, following Lord Bellamy's findings that the current fee schemes do not accurately reflect work undertaken by providers. The review recommended an overall increase of at least 15% for both solicitors and barristers. MoJ implemented an immediate uplift to most criminal fee schemes in September 2022, which it stated would deliver an additional £115 million per year, with some increases backdated to April 2016. This amounted to a 15% pay increase for most schemes. However, while this meant an overall increase of 15% for barristers, for solicitors this amounted to an overall increase of only 9%, which MoJ later increased to 11%. MoJ stated that the lower overall increase was because it was considering reforms to certain fee elements, following recommendations in the review aimed at removing perverse incentives. A court ruling in January 2024 found that MoJ had acted unlawfully by not assessing whether implementing a lower overall increase than recommended for solicitors would meet the aims of the review, particularly ensuring the sustainability of criminal legal aid. However, the court did not find against MoJ on some other grounds, including the challenge relating to access to justice.<sup>16</sup> MoJ has committed to a longer-term action to reform the fee schemes but is still designing and consulting on the changes. This is partly because the Bellamy review did not collect sufficient data to assess the current schemes. MoJ will need to apply for funding for any changes in the 2025 Spending Review.
- **Review of Civil Legal Aid:** MoJ aims to look at potential long-term changes to the sector in its ongoing Review of Civil Legal Aid. The review will include an economic analysis of the structure of the civil legal aid market to assess how it currently works, what is driving gaps in the market, and identify how changes could improve its effectiveness. However, the review will not propose options on specific individual fees. MoJ has not increased fees for civil cases since 1996, and it reduced fees by 10% between October 2011 and February 2012. In real terms, fees are now approximately half what they were 28 years ago.<sup>17</sup>

<sup>16</sup> See the judgment for full details. Law Society of England and Wales -v- The Lord Chancellor - Courts and Tribunals Judiciary (viewed on 2 February 2024).

<sup>17</sup> This estimate was made by comparing the 1996 and 2024 fee levels, assuming a 10% decrease in cash terms since 1996. The 1996 fee level was adjusted for inflation using the latest Gross Domestic Product (GDP) deflator published by HM Treasury. For 2022-23 and 2023-24, Office for Budget Responsibility forecasts were used.



**3.10** LAA's ageing digital systems and resource constraints also limit the pace at which MoJ and LAA can implement changes to the legal aid system. For example, LAA currently relies on temporary manual calculations to make some payment increases under the Bellamy review. LAA is developing and rolling out new systems for legal aid applications but will continue to use much older systems for billing until it is able to secure the required funding for a new system.

### **Future sustainability risks**

**3.11** Ensuring the long-term sustainability of legal aid has heightened importance in the context of increasing cost pressures on providers and wider changes in the justice system. Upcoming changes will affect demand for legal aid. For example, MoJ estimated the Illegal Migration Act 2023 would significantly increase demand for legally aided services from September 2023, as the government widened the scope of legal aid to support its aim of promptly removing individuals who enter the UK illegally. Increased police officer recruitment may also lead to more arrests, and higher demand for duty solicitors at police stations.

**3.12** In response to the Illegal Migration Act 2023, MoJ has committed to a fee increase of 15% for the specific areas of law covered by the Act to attract providers. Due to a shortage of qualified staff in the sector, MoJ expects that providers will deprioritise other immigration work to meet demand, contributing to existing capacity pressures. The number of immigration providers decreased from 208 in October 2018 to 147 in August 2023 (a decline of 29%) before partially recovering to 180 in October 2023. This was due to LAA's retendering of civil contracts in 2023, though it remains to be seen whether firm numbers will stabilise or continue to decline.

**3.13** The supply of qualified staff in the legal aid sector is a particular concern raised by stakeholders, which has implications for the future quality and sustainability of services provided. Respondents to our consultation highlighted the difficulties in training and recruiting new staff, and LAA is aware of provider feedback that staff recruitment and retention are a challenge. Many respondents also indicated that they intended to make changes to their legal aid provision in the next three years, with most of those changes being to either reduce provision or withdraw entirely. These results may not be representative of all providers.

**3.14** Weaknesses in MoJ and LAA's data and processes pose risks to their ability to ensure the sustainability of both civil and criminal legal aid.

- MoJ does not have robust data to help it understand demand for legal aid so that it can assess whether provision is sufficient (see paragraph 2.14).
- MoJ and LAA do not collect financial information from providers to allow MoJ to assess the profitability of legal aid work and ensure that providers remain incentivised to stay in the market (see paragraph 3.6).
- LAA recognises market sustainability and the long-term trend of market decline as a key organisational risk, and there are mechanisms in place for it to raise issues with MoJ. For example, it can raise its highest risks with MoJ via quarterly risk submissions. However, the lack of key data mentioned in the points above means LAA and MoJ are not able to adequately horizon scan for developing sustainability risks. Therefore, risks escalated by LAA focus on areas where there is an immediate risk to or existing gap in provision rather than long-term sustainability. MoJ largely relies on its agencies to escalate risks rather than doing its own assessments.
- MoJ's recent principal risk areas do not include legal aid market sustainability, which means that it may not prioritise action to respond to risks raised by LAA.
- It is not clear how MoJ plans to mitigate further reductions to the civil sector while it completes its Review of Civil Legal Aid. Its current approach may not present solutions that can be quickly implemented (see paragraph 3.10).
- It is not clear how MoJ plans to work with LAA to routinely review market sustainability for both sectors beyond the completion and implementation of its large-scale reviews.

Without a more proactive and routine approach MoJ cannot guarantee access to justice for those eligible for help.

# Appendix One

## Our audit approach

**1** We reached our independent conclusions on whether the Ministry of Justice (MoJ) and Legal Aid Agency (LAA) are ensuring the value for money of legal aid now and in the long term, after analysing evidence collected from MoJ, LAA and external sources between May and December 2023. We formed our conclusions after considering our three audit questions.

- What progress has MoJ made in understanding the full costs and benefits of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) since we last reported?
- How are MoJ and LAA ensuring that legal aid provides access to justice in the way they intend?
- How effectively are MoJ and LAA able to understand and manage the financial sustainability of the sector?

### Interviews

**2** We worked with officials from MoJ and LAA and discussed the administration and provision of legal aid with people in appropriate job roles relevant to the study. We carried out 23 interviews with MoJ and LAA staff, based on the area of expertise of staff members. This included staff responsible for (or involved in):

- policy development;
- key legal aid reviews;
- provider contract management;
- service development and commissioning;
- risk management;
- the exceptional case funding scheme; and
- data analysis.

**3** In addition, we held interviews with stakeholders, including (but not limited to):

- the Local Government Association;
- the Bar Council;
- the Law Centres Network;
- the Law Society;
- the Legal Aid Practitioners Group;
- Citizens Advice;
- the Immigration Law Practitioners' Association;
- Public Law Project;
- Transform Justice;
- Dr Jo Wilding, Lecturer in Law at the University of Sussex with expertise in legal aid; and
- the Centre for Public Data.

**4** We selected stakeholders with good knowledge of aspects of the administration and provision of legal aid. We identified stakeholders via desk research and discussions with LAA and invited these stakeholders by email to participate in an interview. Discussions covered the sustainability of the legal aid market and impacts of LASPO and associated reforms.

### **Stakeholder consultation**

**5** We ran an online consultation between 23 June and 21 July 2023 to gather views and observations from organisations and practitioners who have experience in providing services funded by legal aid, or in the legal aid sector. We sought responses from legal professionals and those who provide advice to individuals with legal issues to ensure that a range of legal aid experience was reflected in the responses. We asked the external stakeholders we interviewed to promote the consultation to their members. LAA also shared the survey with its network of contracted firms.

**6** We did not intend the consultation to be statistically representative. Respondents were self-selecting and we did not seek to verify statements made. This means that we use their answers to illustrate issues that we have found in our audit but not to indicate the scale of any issue. We also cannot use any answer to generalise across the legal aid market. However, there were similarities between many of the issues raised by respondents and findings from our other audit methods. We received 307 responses in total. Not every respondent answered every question.

**7** Our questions were a mix of closed and free-text responses. We used closed responses to identify the type of work the respondent did, and their experience of the legal aid sector. We used free-text responses to ask open questions about respondents' experiences. We asked the following questions.

- What impacts, if any, have the changes in types of cases covered by legal aid since LASPO had on individuals with legal issues?
- What additional costs or savings to other public services or wider society, if any, have these examples had?
- How is the government performing against its objective to target legal aid to those who need it most?
- Have you seen examples of eligible individuals who are unable to access legal aid in the past three years? If yes, why have the individuals been unable to access legal aid?
- How effective do you feel the exceptional case funding scheme is in its current form?
- Have you or your organisation changed the way you work in response to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) or subsequent changes?
- Do you or your organisation intend to make any changes to the amount or type of legal aid work that you provide in the next three years?
- What do you think are the key challenges and opportunities for providers of legal aid in the next five years?

**8** We undertook a combination of qualitative and quantitative analysis of the responses. For each free-text question, we reviewed responses individually to pick out key points, which we collated into common themes across responses. Given the large number of responses received to the survey, our Analysis Hub performed a sentiment analysis for each free-text question, which gives a sentiment score to each response, indicating how positive or negative it is. This then allows for a quantification of the overall tone of responses and therefore helped us to check we were conveying the balance of responses correctly.

## Quantitative analysis

- 9 We performed analysis of official government statistics including:
- legal aid spending over time, in both real and nominal terms (as published on 28 September 2023);
  - trends in the volume and value of cases in different categories of law (as published on 28 September 2023); and
  - legal representation in family and civil courts over time (as published on 14 September 2023).
- 10 We analysed LAA management information on criminal and civil legal aid providers between 2013-14 and 2022-23. This provides information on contracted firms, their area of law, office location and volumes of work done.
- 11 Using LAA's data on contracted firms between 2013-14 and 2022-23, we analysed the following.
- **The percentage of the population within certain distances of their nearest legal aid provider, by category of law:** We extracted data on postcodes of legal aid providers over time. We then calculated the straight-line distance between the population weighted centroid of each Output Area in England and Wales and the nearest office postcode for each category of law. Population for 2022-23 is based on comparing mid-2021 population estimates and 2021 population-weighted centroids, and population for 2013-14 is based on mid-2013 population estimates and 2013 population-weighted centroids from Office for National Statistics Census data. Mid-2021 population estimates are the latest available population estimates at time of analysis. The change in the percentages of the population within the threshold difference over time may also be attributed to other factors such as population change. These factors have not been considered in this analysis.
  - **Changing market provision over time,** such as the proportion of local procurement areas meeting LAA's threshold for minimum service provision and the proportion of firms meeting LAA's definition of 'active'.

## Site visits

- 12 We visited two LAA processing centres: the Nottingham site for criminal legal aid on 4 July 2023 and the South Tyneside site for civil legal aid on 5 July 2023. Each visit comprised a combination of interviews with LAA staff such as case workers, and observations of LAA's application and billing systems in use. The purpose of the site visits was to provide background on:
- the type of applications received for legal aid;
  - key criteria used to assess merits and means of an application;

- the billing process for contracted firms;
- telephone calls received through the public helpline; and
- how information is recorded in the LAA's IT systems.

## **Document review**

### Focus and purpose

**13** We reviewed a range of LAA and MoJ documents on legal aid administration and provision to help us to answer each of our audit questions. The documents reviewed included, but were not limited to:

- the 2019 post-implementation review of LASPO;
- capacity reviews assessing the market for providing legal aid;
- proposals for means test review and civil legal aid review;
- research commissioned or undertaken by MoJ;
- board and working group minutes;
- risk registers and assessments; and
- policy proposal documentation.

### Analytical approach

**14** We reviewed each document against our overarching study questions. The review was used to:

- inform further discussion and follow-up with LAA and MoJ;
- triangulate findings from other sources, including quantitative analysis, our consultation and interviews; and
- inform our approach to the analysis of LAA data on providers.

**15** We made use of specialist expertise within the National Audit Office to support our review and interpretation of key documents. For example, we liaised closely with our Commercial Hub on our review of contract management, and with our Financial and Risk Management Hub throughout our review.





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