



Public
Law
Project

Public Law Project's response to the National Audit Office consultation on legal aid

[JULY 2023]

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Summary

The below comprises PLP's responses to the questions posed in the NAO Consultation on legal aid Webpropol survey. These responses have also been provided through our completion of the survey online.

1. Are you responding as an individual or on behalf of an organisation?

1. We are responding on behalf of Public Law Project.

2. What impacts, if any, have the changes in types of cases covered by legal aid since LASPO had on individuals with legal issues? Where possible please provide specific examples, without giving personal information.

2. As our focus is public law, the majority of our work has remained within the scope of legal aid since LASPO. However, the reduction in scope for immigration matters has nevertheless impacted our work and the lives of those that we represent.
3. For example, the Exceptional Case Funding ('ECF') scheme was introduced to ensure that individuals would still be able to access legal aid post-LASPO in situations where their human rights would otherwise be breached. However, since LASPO came into force, the number of ECF applications for immigration legal aid, and the grant rate, has gone up significantly, suggesting there is a strong case for bringing (at the least) Article 8 immigration cases back into the scope of legal aid.
4. More broadly, the changes in types of cases covered by legal aid since LASPO have resulted in a reduction in the number of legal aid providers that individuals with legal issues can turn to. This has led to increased pressure on existing legal aid providers: in particular, those such as ours who are able to maintain their practice through cross-funding and grants from charitable trusts and foundations. The impacts of legal aid deserts and droughts have been well documented by, in particular, Dr Jo Wilding.¹ Exploring the impacts of the reduction in the scope of legal aid brought about by LASPO must be understood against this backdrop of struggling providers and rapid reduction in the capacity of the sector. Any expansions in the scope of legal aid are likely to be superficial without long-term investment in the provider base.

3. What additional costs or savings to other public services or wider society, if any, have these examples had?

5. We have previously called for an investigation of whether LASPO represents overall value for money for the taxpayer. Therefore, PLP welcomes the National Audit Office's study, particularly in light of the acknowledgement by the Ministry of Justice in its Post-Implementation Review that it was unable to conclude whether "the savings represent saving to the government as a whole or the LAA alone."

¹ <https://research.brighton.ac.uk/en/publications/droughts-and-deserts-a-report-on-the-immigration-legal-aid-market>

6. PLP has previously conducted research² into the downstream costs associated with the deficiencies in the regime which we have highlighted. In our response to this question, we will summarise our findings in relation to the downstream costs where individuals are unable to access legal aid where they would otherwise be eligible through the ECF mechanism. In particular:
 - Inefficiency in the immigration and asylum system resulting from individuals being unable to access legal aid for which they are eligible.
 - Social and economic costs which have resulted from the inadequacy of the ECF mechanism in family cases.

Immigration and asylum

7. In 2022, PLP conducted an online focus group with members of Migrants Organise (a membership organisation for individuals affected by the hostile environment immigration policies) to understand how the legal aid regime is being experienced.³ Every single participant talked about delays in the progress of their case associated with difficulty in finding legal aid funded representation for which they were eligible. This supports the general proposition that lack of capacity in the immigration and asylum legal aid sector, when coupled with the biggest asylum backlog in at least a decade,⁴ is leading to an inefficient immigration and asylum system which leaves immigration and asylum applicants and appellants in limbo.
8. Inefficiency is also resulting from pressures on the legal aid system where individuals do manage to find representation. PLP have gathered evidence on the experiences of organisations that make referrals to immigration and asylum legal aid providers. PLP would welcome further investigation of the wider costs associated with these harms.

Family

9. PLP conducted research to assess whether the ECF scheme provides sufficient access to justice for family cases.⁵ It showed two ways that LASPO was resulting in costs, rather than savings, in this area.
10. Firstly, there was a sharp rise in Litigants in Person after LASPO came into force.⁶ Our research concluded that this was putting pressure on the courts system. This is likely leading to inefficiency because the courts system cannot operate effectively where individuals must perform tasks that would otherwise be carried out by a professional and for which they lack the requisite training or expertise.
11. Secondly, the report concluded that the ECF mechanism is not providing sufficient access to legal aid because the application process is too onerous and most providers lacked capacity to make applications. This, the report held, is resulting in “long-term social costs where individuals are not able

² In this report, we have referred to two reports on this point: [‘Overstretched and Unsustainable: A Case Study of the Immigration and Asylum Legal Aid Sector’](#) – Dr. Jo Hynes (5th June 2023); and [‘Family Law and Access to Legal Aid’](#) – Emma Marshall, Sue Harper and Hattie Stacie (10th April 2018).

³ [‘Overstretched and Unsustainable: A Case Study of the Immigration and Asylum Legal Aid Sector’](#) – Dr. Jo Hynes (5th June 2023).

⁴ Home Office, Immigration system statistics data tables, year ending December 2022, 23 February 2023, <http://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables-year-ending-december-2022>

⁵ [‘Family Law and Access to Legal Aid’](#) – Emma Marshall, Sue Harper and Hattie Stacie (10th April 2018)

⁶ House of Commons Library, ‘Litigants in person: the rise of the self-represented litigant in civil and family cases in England and Wales’ (Parliamentary Briefing Paper, 14 January 2016)

to access advice and representation for family proceedings, particularly when children are involved, and arrangements for contact or financial provision cannot be agreed upon.”⁷

12. Our research indicates that the current legal aid regime is leading to wider social and economic harms by inhibiting eligible individuals’ access to legal aid and through decision-making inefficiency where individuals do not obtain legal representation, or where they do but their provider is over-burdened and under-resourced so is at risk of providing a sub-standard service. It also indicates that this is true across different sectors of legal aid work.
13. Our research has shown that LASPO has displaced costs and created inefficiencies in other public services and in wider society, yet the scale of these impacts across all public services has not yet been fully mapped. Therefore, we welcome further investigation of the costs or savings to other public services or wider society as a result of LASPO and consider that the NAO is well-placed to do this.

4. In your view, how is the government performing against its objective to target legal aid to those who need it most?

14. Poorly. The government is not meeting its objective to target legal aid to those who need it most.
15. First, the out-of-date financial eligibility test means that a significant proportion of the population is assessed as ineligible due to their means, despite being unable to afford to pay for legal representation privately. We regularly encounter potential clients who, despite being on a very low income, do not satisfy the means test.
16. Second, for those areas of law that are out of scope of legal aid, ECF is not an effective safety net and fundamental rights are breached as a result. Problems include the time-consuming nature of applications, the risk of not being paid and experiences of previous applications being refused.
17. Third, the unsustainability of legal aid work means that, on a practical level, legal aid is unavailable in whole geographic areas of the country, for entire categories of law, vulnerable people in those areas are left without access to local legal provision. The Law Society’s research into ‘legal aid deserts’ vividly illustrates how stark the picture is for multiple areas of civil legal aid.
18. Fourth, even in areas like London with a relatively high number of legal aid providers, demand for legal aid services far outweighs supply.⁸ Providing legal aid services at rates of pay that are the same as they were in 1996 is simply financially unsustainable.
19. PLP’s litigation experience shows how badly the government is failing in its objective to target legal aid to those who need it most. Most people would agree that low-income domestic violence survivors within the family court system and children in care/care leavers are two of the groups for whom legal aid is vital. But in the last three years, PLP has had to challenge through the courts the Lord Chancellor and Director of Legal Aid Casework (DLAC) to ensure access to legal aid for these highly vulnerable client groups.⁹ These successful judicial reviews have only been possible with financial backing from the Law Society, and in each case the Lord Chancellor/ DLAC had opportunities to resolve the matter at the pre-action stage but did not.

⁷ Ibid at page 5.

⁸ See, for example, Justice Together’s report on Immigration legal advice in London: [Jo Wilding, Maureen Mguni and Travis Van Isacker \(June 2021\) A huge gulf: demand and supply for immigration legal advice in London, Justice Together.](#)

Domestic violence survivors

20. The below three cases were all brought by women who had suffered domestic abuse and needed legal aid in family proceedings concerning child arrangements. In each case, committed family legal aid practitioners acted for the women in their urgent family matter ‘at risk’ of not getting paid while the judicial review challenge ran its course. The need to engage in separate legal proceedings to secure access to legal aid compounded the stress and emotional toll that the women and their children were already suffering.

- *R (GR) v DLAC* [2020] EWHC 3140 (Admin) - GR, a low-income homeowner, was refused legal aid in a family court case as she didn’t satisfy the means test due to the capital in her home. She was unable to sell the home to pay for a lawyer as it was jointly owned by her abusive ex-partner, who would not have agreed to the sale. The High Court held that the DLAC had a discretion to disregard ‘trapped capital’ from the means assessment if necessary to ensure compliance with the principle of access to justice and GR’s Convention rights. As a result, GR and numerous other women with ‘trapped capital’ have been able to access legal aid.
- *R (RH) v DLAC* (2020) (unreported as settled pre-hearing) - RH was unable to access legal aid due to owning a home despite it being heavily mortgaged and her being in receipt of Universal Credit. Her challenge led to the Lord Chancellor laying regulations so that now the full value of a person’s mortgage is deducted by the DLAC when assessing the value of their property for the purposes of the means test.
- *R (WA) v DLAC and Lord Chancellor* [2023] EWHC 689 (Admin) - WA – a student and single parent - was refused legal aid by the DLAC on means grounds, applying guidance which said a child could be only considered as part of one household. As WA’s son lived with her ex-partner most of the time (something that was in breach of the 50/50 child custody arrangement she was seeking to enforce in the family proceedings), WA was assessed as having higher income than was, in fact, the case. This was because no account could be made for the cost of a second bedroom needed for her son to live in when not with his father. Following the challenge, WA was granted legal aid and the Lord Chancellor has changed his guidance on separated parents so now both parents can be treated as having a child in their household.
- PLP’s litigation experience shows how badly the government is failing in its objective to target legal aid to those who need it most. Most people would agree that low-income domestic violence survivors within the family court system and children in care/care leavers are two of the groups for whom legal aid is vital. But in the last three years, PLP has had to challenge through the courts the Lord Chancellor and Director of Legal Aid Casework (DLAC) to ensure access to legal aid for these highly vulnerable client groups.⁹ These successful judicial reviews have only been possible with financial backing from the Law Society, and in each case the Lord Chancellor/ DLAC had opportunities to resolve the matter at the pre-action stage but did not.

Looked-after children/care leavers

- *R (CR) v DLAC* (2021) (unreported as settled pre-hearing) - the foster parents of CR – a severely disabled child in care – were denied legal aid to bring a Special Educational Needs Tribunal appeal on her behalf concerning an unsuitable school placement. The foster parents, who

⁹ For a summary of other cases PLP has brought on legal aid matters not listed below see: <https://publiclawproject.org.uk/current-projects-and-activities/legal-aid/legal-aid-strategic-casework/#:~:text=The%20Public%20Law%20Project%2C%20R,UK%20could%20get%20legal%20aid>

were in the process of trying to adopt CR, had their means assessed by the DLAC despite the fact they did not have full parental responsibility for her. Following the case, the Lord Chancellor amended his regulations so now foster carers or prospective adoptive parents of looked-after children will no longer be means tested when they apply for 'legal help' (initial advice and support) or 'legal representation' in a SEND Tribunal appeal.

- PLP has sent pre-action correspondence to the Lord Chancellor and DLAC on behalf of unaccompanied asylum-seeking young people in Wales who cannot access legal aid. These care leavers are currently being paid Basic Income as part of a pilot scheme by the Welsh Government, something that means that single participants without children are financially ineligible for legal representation in their asylum claims. PLP has managed to resolve the issue for one client, but only because their local authority has agreed to pay for them to access private legal representation. Others remain ineligible due to the means test.

5. Have you seen examples of eligible individuals who are unable to access legal aid in the past three years? In these examples, why have the individuals been unable to access legal aid?

[We define eligible individuals as individuals who meet the means test requirements and whose case is in scope.]

21. Yes, frequently.
22. PLP's casework team regularly sees examples of this, we are finding it particularly difficult at the moment to find immigration and asylum representatives to refer clients to when we lack capacity to take the case ourselves.
23. Legal aid is increasingly inaccessible to eligible individuals because the legal aid sector lacks capacity to meet demand; large geographical areas lack provision; and eligible individuals whose cases would require an application for ECF are struggling to find providers who are prepared to bear the administrative burden (and cost) associated with such an application or, even where ECF is secured upfront by a non-legal aid provider (e.g. a university law clinic) there is then no legal aid provider to refer the matter to.
24. PLP's upcoming 'Oceans of Unmet Need' report documented experiences of organisations attempting to help people access advice and support from immigration and asylum legal aid providers. We have found that, more often than not, when an eligible individual is referred for legal aid, those supporting them cannot find anyone to take their referral up.
25. PLP [conducted a National Legal Aid Capacity Data Collection Survey](https://publiclawproject.org.uk/latest/immigration-legal-aid-call-for-evidence-can-you-help/)¹⁰ in March 2023. It found that:
 - For every 16 referral attempts that were made across the nine organisations that responded, only one attempt was successful. This represents a total of only 83 successful referrals from a total of 1,337 attempts.
 - Of the 261 cases that organisations said they had tried to refer to a legal aid provider, 57% (n=149) of cases were still awaiting a successful referral.

¹⁰ <https://publiclawproject.org.uk/latest/immigration-legal-aid-call-for-evidence-can-you-help/>

- Eight out of the nine organisations said it was harder to make an effective referral compared to one year ago. One said that they were ‘not sure’.

Several organisations said that they had difficulties making referrals for particular case types, specifically fresh claims or cases that incur additional costs in the form of expert reports, interpreters or travel costs. One organisation noted that, because of a lack of capacity in their preferred providers, they were forced to make referrals to a legal aid provider they ‘would generally avoid’ due to the provider’s poorer quality work.

- 26.** PLP’s findings show that the disadvantage to those seeking referral is greater in the large geographical areas where limited or no provision of immigration legal aid is available (this represents two-thirds of the country).¹¹ For example, Refugee Action in Manchester told us that since October 2022, they have experienced increasing difficulty in successfully making referrals. Of the ten organisations they refer to, all are now indicating that they do not have capacity. Three indicated that they had over 150 cases waiting.
- 27.** The situation is stark: providers are operating with saturated capacity and yet still unable to financially sustain themselves. The sector has insufficient capacity to meet demand but lacks the resources necessary to grow.

6. The ‘exceptional case funding’ scheme is intended to fund cases outside the scope of legal aid, where a failure to do so would result in a breach of the applicant’s rights under international law. How effective do you feel the exceptional case funding scheme is in its current form?

Please include how, if at all, you feel the scheme could be made more effective.

- 28.** Despite some improvements made to the ECF scheme since its introduction, PLP research has consistently found it to be a barrier to access to justice. The time and costs risk involved in making applications means taking on ECF work involves providers operating at an even greater loss than with in-scope work.
- 29.** PLP’s research ‘Improving Exceptional Case Funding: Providers’ Perspectives’ (January 2020)¹² identified multiple reasons for providers not using the scheme; the risk of not being paid, particularly where resources are stretched and the applications are not cost effective; previous applications being refused; and the application process being off-putting, particularly due to it being time consuming.
- 30.** Recent research carried out for PLP’s upcoming ‘*Oceans of Unmet Need*’ report indicates that certain types of cases, in particular work that would require a grant ECF, is harder to find providers for. In fact, multiple providers reported that they have stopped taking on work that would require ECF altogether because of the associated administrative burden. Many of those that do perform this type of work only do so where they have existing relationships with the individuals concerned. As a result, individuals whose case falls outside of the normal scope of legal aid, but who are nonetheless eligible to receive it, are unable to access funding. This is particularly concerning given that such cases, by definition, occur where individuals’ fundamental rights appear to be at risk.

¹¹ <https://www.lawsociety.org.uk/campaigns/legal-aid-deserts>

¹² [Improving-Exceptional-Case-Funding-Website-Publication-Version-docx.docx.pdf \(publiclawproject.org.uk\)](#). Further research was published later. Further research titled ‘Improving Exceptional Case Funding: Responding to COVI-19’ (October 2020) was published later that year [201001-FInal-Improving-Exceptional-Case-Funding-1.pdf \(publiclawproject.org.uk\)](#)

- 31.** The administrative burden of ECF puts unnecessary pressure on immigration and asylum practitioners in particular. There were 2,264 immigration applications made in the 2022/2023 financial year and 87% of those applications were successful.¹³ Given these high grant rates, we suggest there is a clear case for broadening the scope of legal aid, particularly for human rights immigration cases based on the right to respect for private and family life under Article 8 of the European Convention on Human Rights. The existence of common types of case that are outside of the scope of legal aid, but extremely likely to be granted ECF, results in the inefficient allocation of resources to the processing of applications that could otherwise form part of the Legal Aid budget.
- 32.** For in-scope controlled work (e.g. legal help and certain limited types of legal representation) providers have the delegated power to determine eligibility without the need to make an application to the DLAC. Extending these powers to ECF cases could avoid the need for providers to make time consuming applications, particularly in areas where there is a high demand for ECF and the evidence indicates providers have a good understanding of the criteria for granting ECF.
- 33.** We have the following recommendations for improvements to the ECF scheme:
- The application process and evidence required should be simplified so that it is accessible to direct applicants;
 - Contactable caseworkers should be assigned to applications;
 - The scheme should be financially viable for providers;
 - Providers should have increased delegated powers to determine eligible ECF controlled work cases without the need to make an application to the DLAC;
 - Where grant rates are high in a particular area of law, that should trigger a review of whether to bring the matter within the scope of Legal Aid.

7. 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?

For example, changes to: types of legal aid work provided, amount of legal aid work provided, staffing, organisational structures or other efficiencies.

- 34.** Yes. PLP has not been affected by LASPO to anywhere near the same extent as many legal aid providers. This is because practitioners at PLP mainly provide representation in public law cases which has remained in scope of legal aid (unlike e.g. much of private family law or welfare rights/social security).
- 35.** One way our work has changed is that PLP has spent a considerable amount of time challenging the regressive reforms brought in through LASPO, via judicial review, research and campaigning work. For example, the case of *R (Gudanaviciene & Ors) v DLAC & Ors* [2014] EWHC 1840 and EWCA Civ 1622 was prompted by the severe problems with the ECF scheme post-LASPO. The High Court and Court of Appeal found the ECF guidance was unlawful and it was subsequently significantly amended, leading

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1166010/legal-aid-statistics-tables-jan-mar-2023.ods

to a rise in ECF applications. PLP created a series of guides on applying for ECF¹⁴ to try and increase update of the Scheme amongst practitioners, which continue to be well-used.

- 36.** The removal by LASPO of legal aid funding for early advice has impacted upon our casework. What remains in scope of legal aid is '*Civil legal services provided in relation to judicial review of an enactment, decision, act or omission*' (Sch 1, paragraph 19 LASPO), and the legal help merits test must be met to open a legal help file. Where an individual has a legal issue that is too minor to justify the administrative steps needed to open a file and/ or where judicial review is likely to be premature, we often provide some pro-bono initial assistance in the form of a call or email advice concerning the client's issue where capacity permits. There should be funding available for this work, which is often vitally important in resolving legal problems at an early stage or empowering the client to take steps themselves.
- 8.** 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?
- 37.** I'm not sure. PLP as a charity undertaking a range of work of which litigation is only one aspect is in a privileged position compared to many legal aid providers. We have a range of funding sources, with grants and donations being our largest income stream and self-generated casework income being the second largest. PLP does very little privately paid work and the non-legal aid casework PLP does is mostly provided under Conditional Fee Agreements ('no win no fee'). PLP also generates income from events and training.
- 38.** This diverse funding model means PLP can cross-subsidize the legal aid work that operates at a loss. For example, work done under public law legal help files is overall loss making, as is much of the immigration work we do, because for the latter there is no prospect of recovering costs at inter-partes rates in the same way there is in High Court judicial reviews. However, our ability to cross-subsidise and effectively to prop up a broken legal aid system from other income streams is no substitute for a properly funded legal aid system.
- 39.** PLP is and always has been committed to legal aid work and we strongly believe in the importance of the legal aid system in ensuring access to justice. But by its nature relying on grants and donations, and the occasional large inter-partes costs orders following successful judicial review claims, to subsidize loss-making legal aid work carries a level of risk. Litigation outcomes are unpredictable as are grants – as funders' interests and priorities shift – so whether we are able to continue doing the same amount of legal help and immigration work without any increase in rates cannot be guaranteed.

¹⁴ [Exceptional Case Funding - Public Law Project](#)

9. Challenges and opportunities for providers of legal aid in the next five years

Challenges

Financial sustainability

40. The key challenge for many legal aid providers over the next five years is whether they will even survive that long. Legal aid is not economically viable for many providers and the pressures on those who remain incentivise a reduction in quality. The hourly rates are the same today as they were in 1996 (e.g. £51.62 for immigration/asylum work) and the fixed fee model means providers receive an even lower equivalent rate overall. There are vast areas of the country with insufficient providers to meet demand for entire categories of law that remain in scope, such as housing or immigration and asylum. The outcome of the recently concluded Means Test Review by the MoJ estimates that over 2 million more people will become eligible for civil legal aid each year. However, with 25% of civil legal aid providers exiting the market over the past decade¹⁵, the supply is simply not there to meet the current level of demand, let alone any increase.

Immigration/asylum case study

We are currently investigating the market failure in immigration legal aid provision specifically. In the South West, we now estimate there are less than 300 matter starts available annually in a region where Home Office dispersal patterns mean there are thousands of individuals eligible for asylum legal aid. Local Authorities in the area support 4,603 asylum seekers.¹⁶ The introduction of the Bibby Stockholm (barge to house asylum seekers) will add another 500 people to this list. At least 6 providers have closed down in the last 2 years, leaving only 4-5 providers covering a large geographical area spreading from Cornwall to Bristol.

Providers have told us that the long Home Office delays in progressing asylum claims mean that it can take years to receive payment from the LAA for work done. The constant legislative and policy changes undermine any predictability in the nature of the work and prevent any forward planning. We consider a recent government consultation proposing to increase fees by 15% for work done under the Illegal Migration Bill to be unacceptable. Similar tinkering to the system saw a fixed fee regime introduced for controlled work in the first-tier tribunal earlier this year. Despite our warnings,¹⁷ this was pushed through and resulted in the largest immigration provider pausing their work in this area due to financial and capacity concerns. Piecemeal and reactive changes to the immigration legal aid scheme leave providers exposed and are detrimental to ensuring access to justice for those who most need it.

¹⁵ <https://questions-statements.parliament.uk/written-questions/detail/2022-02-09/121917>

¹⁶ Home Office. (2023). Asy_D11: Asylum seekers in receipt of support by support type, accommodation type and local authority. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1156826/section-95-support-local-authority-datasets-mar-2023.xlsx

¹⁷ <https://ilpa.org.uk/ilpa-and-plp-response-to-ministry-of-justice-immigration-legal-aid-consultation-on-new-fees-for-new-services-10-august-2022/>

Legal Aid Agency decision making and ‘administrative burdens’

- 41.** The way in which legal aid is administered by the LAA creates inefficiencies that compel providers to accept financial risk or limit the legal aid work they take on. For example:
- Providers are required to seek permission to incur costs at a number of stages and lengthy delays can occur that compel a provider to work at risk, seek adjournment or be forced to work under significant time pressure to meet deadlines.
 - The Standard Civil Contract does not allow for providers to be able to receive payments on account for controlled work, which increases debt and creates cash flow problems.
 - Providers who undertake judicial review work are expected to work at risk up to the permission stage.
 - Providers are disincentivised from taking on meritorious but complex or urgent cases. This increases the financial pressures upon those that do. It can also put clients in an invidious position when their matter is urgent, compelling providers to proceed before their eligibility or level of contribution is certain or placing them at a costs risk.
 - LAA ‘compliance activity’ can result in the most complex files being subjected to scrutiny multiple times. It creates significant risk for providers and significant unremunerated demands on their time potentially leading to an ‘audit spiral’ where multiple historic files must be reviewed with the risk of incurring financial penalties.
- 42.** PLP is concerned that administrative burdens on providers will get worse if the Ministry of Justice proceeds with its Means Test Review (MTR) proposal to implement a £500 earnings threshold for applicants in receipt of Universal Credit who are currently passported through the income assessment part of the means test.¹⁸ PLP’s response to the MTR consultation paragraphs 129 –142 outlined our concerns in detail.¹⁹ We are not alone in this: 88% of respondents to the MTR consultation disagreed with the UC passporting proposal - which we note that the MoJ is nevertheless planning on implementing.²⁰

Recruitment and retention

- 43.** As more providers give up their legal aid contracts or close altogether, more practitioners leave the sector. This experience is not easily replaceable. In order to remain profitable in private practice, legal aid work must be subsidised by higher paying private work. For higher earning experienced practitioners, legal aid work is unviable when individual financial targets must be met. Our recent research found that young practitioners in the immigration and asylum legal aid sector face a barrage of overwork, financial unsustainability and serious emotional and wellbeing concerns. When asked what they saw as the most likely scenario in the next five years, 14% said they would take on less immigration and asylum legal aid work and 19% said they anticipated either leaving immigration and asylum legal aid practice or legal aid practice entirely.²¹

¹⁸ [Legal Aid Means Test Review \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

¹⁹ [220606-PLP-MTR-Response-FINAL.pdf \(publiclawproject.org.uk\)](https://publiclawproject.org.uk)

²⁰ [Government response to Legal Aid Means Test Review - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

²¹ [YLAL Report - Final \(publiclawproject.org.uk\)](https://publiclawproject.org.uk)

Opportunities

The Review of Civil Legal Aid (RoCLA)

44. RoCLA is currently ongoing with an objective to improve legal aid sustainability and with stated outcomes focusing on financial viability and making legal aid an attractive career option. The Review is not due to report its findings until spring 2024 and there is no guarantee that its recommendations will be taken up by government. It is disappointing that interim financial support measures have been ruled out. At PLP we have successfully worked with the MoJ to influence the Means Test Review and with the LAA to shape their guidance around valuing inaccessible capital. We can only hope that our longstanding concerns and those of other stakeholders are acted on this time. With the outcomes of the Review remaining uncertain for the foreseeable future, the only certainty is that without urgent financial investment, the situation for legal aid providers is only going to get worse.

10. Are you happy for us to contact you if we need to clarify any of the information within your responses?

45. Yes.



Contact

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Public Law Project is an independent national legal charity.

We are researchers, lawyers, trainers, and public law policy experts.

For over 30 years we have represented and supported individuals and communities who are marginalised through poverty, discrimination, or disadvantage when they have been affected by unlawful state decision-making.

Our vision is a world where the state acts fairly and lawfully. Our mission is to improve public decision making, empower people to understand and apply the law, and increase access to justice.

We deliver our mission through casework, research, policy advocacy, communications, and training, working collaboratively with colleagues across legal and civil society.

Public Law Project contributes and responds to consultations, policy proposals, and legislation to ensure public law remedies, access to justice, and the rule of law are not undermined.

We provide evidence to inquiries, reviews, statutory bodies, and parliamentary committees and we publish research and guides to increase understanding of public law.

Public Law Project's research and publications are available at:

www.publiclawproject.org.uk/resources-search/