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Immigration legal aid and value for money: Identifying the missing data

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Introduction

The Legal Aid, Sentencing, and Punishment of Offenders Act of 2012 (LASPO) intended to make significant savings to the cost of the civil legal aid budget and to deliver better overall value for money for the taxpayer.¹ Despite these aims, the government to date has been unable to provide evidence that the changes to the scope of legal aid, which came into effect in 2013, deliver value for money. Earlier this year, the National Audit Office reported that the Ministry of Justice still ‘does not know the full costs and benefits of LASPO’.² The Public Accounts Committee also recently described efforts by the Ministry of Justice to measure the scale of wider system costs resulting from LASPO as ‘disappointing’.³

1 Ministry of Justice (2019) Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. February 2019. CP 37. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3b2b40f0b676c362b4e0/post-implementation-review-of-part-1-of-laspo.pdf>.

2 National Audit Office (2024) Government’s management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>. Para 7.

3 Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>. Para 5.

This report argues that to deliver better value for money, there must be significant improvements to the systematic collection and analysis of quantitative data across government. Without such information, it is impossible to know whether better value for money has in fact been delivered. In doing so, we join existing calls for data-driven approaches to access to justice policy.⁴ Better data would not only enable a better understanding of the impact of changes to immigration legal aid under LASPO, which is the focus of this report, but would also improve our understanding of the wider impact of changes to the scope of civil legal aid. Although this report focuses on the economic impacts of LASPO, we acknowledge the wide body of literature that speaks to the human cost of building immigration legal aid policy on a poor evidence base, including, for example, the detrimental impacts of protracted periods of waiting on mental health.⁵

Understanding the full costs and benefits of changes to the scope of immigration legal aid under LASPO is necessary to ensure an immigration system that is not only fair but also transparent in its use of public funds. The Post-Implementation Review of LASPO, published by the Ministry of Justice in 2019, found that the reduction in spending for immigration legal aid was £15 million.⁶ Qualitative evidence suggests that the reduction in the scope of immigration legal aid under LASPO has shifted costs across government, therefore moving rather than reducing overall expenditure.⁷

This report draws from existing evidence, including recent reports by the National Audit Office,⁸ and the Public Accounts Committee,⁹ to summarise the key hypotheses that need to be tested and the data required to enable this. We focus on synthesising the areas where more data are needed based upon the evidence available, as this would be a valuable starting point for assessing how cost shifting has occurred across government. We recognise that there may be other areas where the impact is currently unknown or unreported, or where data is more difficult to collect. We focus on the ‘known unknowns’ in this report but emphasise that further research is needed to identify the ‘unknown unknowns’.

Spending public money wisely does not always mean spending less. Although the authors of this report are cautious about an emphasis on economic arguments when discussing issues of human rights, the overall costs of policy decisions matter because public finances are a resource that must be carefully managed. Furthermore, economic arguments typically play a key role in the public discourse around public policy. Transparent public debate requires the ability to evaluate the merits of these arguments.

Understanding the full costs of a policy decision forms is therefore an important part of the government’s fiduciary responsibilities to taxpayers. It is not, however, only the overall costs that matter: cost sharing and who bears the costs are important considerations when evaluating the overall efficiency of policies. Beyond efficiency considerations, previous literature in economics emphasises the need to account for both the aggregate and distributional effects of legal aid expenditure to better understand the mechanisms and inform future policy.¹⁰ Thus, we emphasise that the distributional effects of LASPO are important.

The aim of this report is therefore to identify where better data can and should be collected to test whether the reduced scope of immigration legal aid under LASPO produces inefficiencies across other areas of government. This would involve not only assessing the aggregate cost and benefit of immigration legal aid, but also the distributional effects across national, regional, and local councils. Our conclusion is that at present the necessary data simply do not exist, but in order for any government to deliver value for money, legal aid policy must be better informed by evidence. To this end, we propose five hypotheses to test.

4 Byrom, N. (2024) Where has my justice gone? Current issues in access to justice in England and Wales. Available at: <https://www.nuffieldfoundation.org/wp-content/uploads/2024/Where-has-my-justice-gone.pdf>.

5 Côté-Olijnyk, M., Christopher Perry, J., Paré, M. and Kronick, R. (2024) The mental health of migrants living in limbo: a mixed-methods systematic review with meta-analysis. *Psychiatry Research* 337, 115931.

6 Ministry of Justice (2019) Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. February 2019. CP 37. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3b2b40f0b676c362b4e0/post-implementation-review-of-part-1-of-laspo.pdf>.

7 Wilding, J. (2023) ‘It’s a no-brainer’: local authority funding for immigration legal advice in the UK. Available at: <https://justice-together.org.uk/wp-content/uploads/2023/05/JT-Local-authority-funding-for-immigration-v3.pdf>.

8 National Audit Office (2024) Government’s management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>.

9 Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>.

10 Rickman, N., Fenn, P. and Gray, A. (1999) The reform of legal aid in England and Wales. *Fiscal Studies* 20(3) 261-286.

Summary of hypotheses

1

Difficulties accessing legal advice can prolong the time that people spend waiting to regularise their immigration status, beyond delays caused by inefficiencies in other parts of the immigration system.

2

Removing the Exceptional Case Funding scheme for immigration would make significant savings to the Legal Aid Agency budget.

3

Difficulties that appellants face accessing legal representation increases costs for HM Courts and Tribunals Service (HMCTS).

4

Costs to local authorities where immigration legal aid is not available exceed the savings made by cuts to the budget for immigration legal aid.

5

Immigration legal aid helps people to resolve their immigration issues more quickly, which has potential direct cost benefits for health services as well as wider social benefits.

Summary of key missing data

DATA REQUIRED	IS THE DATA CURRENTLY PUBLISHED?	WHO COULD COLLECT THIS DATA?
Total expenditure by the Legal Aid Agency on the administration of the Exceptional Case Funding scheme, including the means assessment process and operational costs.	No	Legal Aid Agency
Expenditure on processing Exceptional Case Funding applications by category of law and complexity of case.	No	Legal Aid Agency
Number of immigration appeals heard with legal representation and without legal representation. Length of hearings and outcomes of appeals with and without legal representation.	No	HMCTS
Number of immigration appeals adjourned due to the absence of legal representation.	No	HMCTS
Appeal waiting times including breakdown for represented and unrepresented cases, and adjournments.	No	HMCTS
Total expenditure by local authorities and other government departments or devolved government on alternative forms of immigration advice provision e.g. including direct payments for private advice, in-house advice provision and funding to local charities.	No	Local authorities Department for Levelling Up, Housing and Communities Welsh Government
Local authority expenditure on statutory support for people with different categories of immigration status, including financial support and temporary housing costs e.g. how many people are in temporary accommodation due to no recourse to public funds or being without leave to remain, and for how long.	No	Department for Levelling Up, Housing and Communities and local authorities
Number of hospital discharges delayed due to immigration status (including where leave applications need to be made) with costs per day/per delay.	No	NHS England

The changes to immigration legal aid under LASPO

When LASPO was enacted, the legislation had four key objectives:

- 1 To make significant savings in the cost of civil legal aid;
- 2 To discourage unnecessary and adversarial litigation at public expense;
- 3 To target legal aid to those who need it most; and
- 4 To deliver better overall value for money for the taxpayer.¹¹

To deliver the objectives of the legislation, LASPO substantially reduced the areas of law in which publicly funded ('legal aid') advice and representation is provided in England and Wales. Immigration was one of these areas, although there were also significant reductions to the scope of other areas of civil legal aid, including family law, housing and welfare benefits.

Under LASPO, immigration legal aid is only available for asylum claims and a number of other narrow immigration categories specified by the Act.¹² For all other immigration matters, legal aid can only be accessed via the Exceptional Case Funding (ECF) scheme. Applications through the ECF scheme are complex and create an additional administrative burden on both legal aid lawyers and the Legal Aid Agency, which is responsible for processing legal aid applications as an agency of the Ministry of Justice.¹³

Some amount of cost shifting was anticipated when LASPO was implemented, including the expectation that increased resource costs would be transferred to other government departments.¹⁴ Although the Ministry of Justice was aware of the potential for cost shifting to occur, processes were not set up following the enactment of LASPO to collect data to understand the impact on the wider system.¹⁵ In 2019, the Post-Implementation Review by the Ministry of Justice identified the need to 'obtain a better understanding of this purported cost transference'.¹⁶ There has, however, been little progress on this to date.¹⁷



¹¹ Ministry of Justice (2019) Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. February 2019. CP 37. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3b2b40f0b676c362b4e0/post-implementation-review-of-part-1-of-laspo.pdf>.

¹² Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1

¹³ Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>.

¹⁴ Cookson, G. (2013) Analysing the economic justification for the reforms to social welfare and family law legal aid. *Journal of Social Welfare and Family Law* 32(1) 21-41.

¹⁵ National Audit Office (2014) Implementing reforms to civil legal aid. HC 784. Session 2014-15. 20 November 2014. Available at: <https://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>.

¹⁶ Ministry of Justice (2019) Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. February 2019. CP 37. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3b2b40f0b676c362b4e0/post-implementation-review-of-part-1-of-laspo.pdf>. Para 113.

¹⁷ National Audit Office (2024) Government's management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>; Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>.

What data is needed to understand the overall costs and benefits of LASPO?

Qualitative evidence collected over the past decade indicates that the overall reduction in legal aid expenditure has increased spending in other parts of government and public services, placing pressure on courts, health services, local authorities, prisons and social services.¹⁸ Existing research shows that the reduction in the scope of immigration legal aid has a significant impact on local authorities in particular, which have legal duties to support those who cannot access other public funds.¹⁹ Where immigration legal aid is inaccessible, costs are shifted to other government departments, including the Department for Levelling Up, Housing and Communities and the Department of Health and Social Care, as well as charitable organisations that are independent from government but may be part funded by public funds, or provide services that take pressure away from public services.²⁰

Although there are some costs that can potentially be measured with more detailed data from government departments, as will be discussed below, the wider impact of LASPO and the operation of the immigration system makes some of the potential measurements more complex. One indirect consequence of the changes

to the scope of immigration legal aid is the knock-on impact that this has had on the provision and availability of immigration legal aid for matters that are in scope (e.g. asylum).²¹ The number of providers with a contract for immigration matters (including asylum) has fallen significantly since LASPO came into effect.²²

Other factors that have contributed to the overall accessibility of legal aid and the growth of ‘advice deserts’²³ include the low fees for immigration work, particularly for cases not related to the introduction of the Illegal Migration Act 2023 where fees have recently been updated,²⁴ and the administrative burden associated with managing a legal aid contract.²⁵ The Law Society conducted analysis of data from the Legal Aid Agency and the Office of National Statistics, finding that 63% of the population in England and Wales do not have access to an immigration and asylum legal aid provider.²⁶ The National Audit Office and Public Accounts Committee both highlight the need for the Ministry of Justice and Legal Aid Agency to more closely monitor demand for immigration legal aid and the capacity of providers.²⁷ There are also wider issues with the immigration system that cause inefficiencies, for example, delays to decision-making within the Home Office,²⁸ which are not necessarily resolved through legal aid.

Hypothesis to test: difficulties accessing legal advice can prolong the time that people spend waiting to regularise their immigration status, beyond delays caused by inefficiencies in other parts of the immigration system.

There has been a long-running literature on migration in economics that supports the argument for better data on migration. Recent literature from the United States focuses on the economic consequences of internal migration for economic reasons.²⁹ Important questions that arise from this body of research include how migration shapes labour markets, and the welfare implications for those who move or who do not move, such as migration due to higher productivity and therefore higher overall income.³⁰ Economic research on asylum claims has looked at the connection between motivations for seeking asylum and how asylum seekers are often different in economically meaningful ways from

other migrants.³¹ The publication of more detailed data by government on the provision of immigration legal aid in England and Wales and immigration processing times would allow for analysis of the relationship between advice and how long people wait to regularise their status. This is important because particular types of immigration status, or having no documented immigration status, can increase reliance on local authority services, which is an issue discussed below. The additional time spent waiting is not only likely to produce wider costs to the system but may also hinder any economic benefits of faster integration processes where immigration status is resolved more quickly.

A broad conclusion that can be drawn from literature in economics,³² and that is supported by Home Office analysis,³³ is that ‘deterrent’ policies have little effect, so improving the conditions for asylum seekers during processing would strengthen integration without increasing the number of people that apply for asylum. We therefore suggest that there is a need for research that better understands the relationship between processing times, grants of status, and the economic potential of improving refugee integration processes through fairer structures. Rather than focusing on the ‘extensive margin’ with respect to immigration, which has often been the focus of the economics literature on migration (i.e. who moves within or beyond national borders, the categories of this migration, and how many people move overall), we believe that it is important to investigate potential gains to be made on the ‘intensive margin’ (i.e. how quickly immigration status is regularised on average and which kinds of cases can be resolved quickly) through more efficient processing of immigration cases and the economic benefits of this. We also take the view that it is important to consider the context through which integration takes place and the societal structures that help to support integration,³⁴ rather than placing the responsibility to integrate on migrants or refugees.

18 National Audit Office (2024) Government’s management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>.

19 Wilding, J. (2023) ‘It’s a no-brainer’: local authority funding for immigration legal advice in the UK. Available at: <https://justice-together.org.uk/wp-content/uploads/2023/05/JT-Local-authority-funding-for-immigration-v3.pdf>.

20 Wilding, J. (2023) ‘It’s a no-brainer’: local authority funding for immigration legal advice in the UK. Available at: <https://justice-together.org.uk/wp-content/uploads/2023/05/JT-Local-authority-funding-for-immigration-v3.pdf>.

21 Rourke, D., Cripwell, E., Summers, J. and Hynes, J. (2023) Access to immigration legal aid in 2023: an ocean of unmet need. Available at: <https://publiclawproject.org.uk/content/uploads/2023/09/Oceans-of-unmet-need-Sep-2023.pdf>.

22 The number of immigration providers pre-LASPO was 290 (according to the Post-Implementation Review). The number of immigration providers on the Legal Aid Agency directory, at the time of writing, is 232. See Ministry of Justice (2019) Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. February 2019. CP 37. Available at: <https://assets.publishing.service.gov.uk/media/5c5b3b2b40f0b676c362b4e0/post-implementation-review-of-part-1-of-laspo.pdf> and Legal Aid Agency (2014, updated 28 May 2024) Directory of providers. Available at: <https://www.gov.uk/government/publications/directory-of-legal-aid-providers>.

23 Burrige, A. and Gill, N. (2017) Conveyor-belt justice: precarity, access to justice, and uneven geographies of legal aid in UK asylum appeals. *Antipode* 49(1) 23-42; Wilding, J. (2019) Droughts and Deserts. A report on the immigration legal aid market. Available at: <http://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>.

24 Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>.

25 The Law Society (2021) Civil legal aid: a review of its sustainability and the challenges of viability. Available at: <https://www.lawsociety.org.uk/topics/research/civil-sustainability-review>.

26 The Law Society (2024) Immigration and asylum – legal aid deserts. Available at: <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/immigration-and-asylum>.

27 National Audit Office (2024) Government’s management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>; Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>.

28 Tyler-Todd, J., Lalic, M., McKinney, C.J., Sturge, G. and McNair, L. (2024) Estimates Day debate: the spending of the Home Office on asylum and migration. House of Commons Library. CDP 2024/0054. Available at: <https://researchbriefings.files.parliament.uk/documents/CDP-2024-0054/CDP-2024-0054.pdf>.

29 Jia, N., Molloy, R., Smith, C. and Wozniak, A. (2023) The economics of internal migration: advances and policy questions. *Journal of Economic Literature* 61(1) 144-180.

30 Jia, N., Molloy, R., Smith, C. and Wozniak, A. (2023) The economics of internal migration: advances and policy questions. *Journal of Economic Literature* 61(1) 144-180.

31 Chin, A. and Cortes, K.E. (2015) The refugee/asylum seeker. *Handbook of the Economics of International Migration* 1 585-658.

32 Hatton, T.J. (2016) Refugees, asylum seekers, and policy in OECD countries. *American Economic Review* 106(5) 441-45.

33 Home Office (2023) Impact Assessment, Illegal Migration Bill. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165397/Illegal_Migration_Bill_IA_-_LM_Signed-final.pdf

34 Phillimore, J. (2021) Refugee-integration-opportunity structures: shifting the focus from refugees to context. *Journal of Refugee Studies* 34(2) 1946-1966.

Additional costs to the Ministry of Justice

Some individuals in need of immigration legal aid are able to access assistance through the ECF scheme. In 2022/23 there were 2,265 applications for immigration ECF and 1,966 of these were granted, a grant rate of 87%.³⁵ The National Audit Office reported at the beginning of 2024 that processing costs for ECF may be higher than standard applications, but the Legal Aid Agency cannot quantify costs as 'staff do not record how much time they spend on ECF cases'.³⁶ More recently, the Public Accounts Committee received a broad breakdown of the costs to the Legal Aid Agency for processing ECF applications.³⁷ The Legal Aid Agency submitted new evidence to the Public Accounts Committee in April 2024 estimating that the cost of processing each ECF application is £203, which is six times higher than a standard application (£34) and slightly higher than other complex civil applications (£197).³⁸

According to the Legal Aid Agency the total estimated staff cost of ECF processing is £671,906.³⁹ This figure excludes the cost of the means assessment process and operational costs.⁴⁰ Based on 2,265 immigration ECF applications in 2022/23 at an average cost of £203 per application, the overall cost of processing immigration ECF applications is approximately £459,795. If these applications were processed as standard applications, the total cost would be £77,010.

Assuming that most immigration legal aid applications would be processed as standard applications, the saving of bringing immigration legal aid back into scope could be approximately £382,785 in Legal Aid Agency processing costs (the difference between ECF application processing costs and standard application processing costs according to the volume of immigration ECF applications in 2022/23). To further refine this figure, we would need to know the complexity of immigration ECF applications that are processed (i.e. amount of time spent per application), as well as the additional means processing and operational costs to the Legal Aid Agency.

Hypothesis to test: removing the ECF scheme for immigration would make significant savings to the Legal Aid Agency budget.

The Public Accounts Committee recommended that further work is needed to understand the costs of the ECF scheme, as the additional processing costs result in a high proportion of immigration cases being granted in any case.⁴¹ This also raises the question of whether the rate of refusal offsets the additional processing costs.

DATA REQUIRED	IS THE DATA CURRENTLY PUBLISHED?	WHO COULD COLLECT THIS DATA?
Total expenditure by the Legal Aid Agency on the administration of the ECF scheme, including the means assessment process and operational costs.	No	Legal Aid Agency
Expenditure on processing ECF applications by category of law and complexity of case.	Yes	Legal Aid Agency
Average cost of immigration legal aid per case at legal help stage and civil representation stage.	Yes	Legal Aid Agency Published at: https://www.gov.uk/government/collections/legal-aid-statistics

³⁹ Committee of Public Accounts (2024) Letter from Jane Harbottle, Chief Executive of the Legal Aid Agency, 're: Public Accounts Committee Value for Money from Legal Aid – 25 March oral evidence follow up', 3 April 2024. Available at: <https://committees.parliament.uk/publications/44177/documents/219841/default/>.

⁴⁰ Committee of Public Accounts (2024) Letter from Jane Harbottle, Chief Executive of the Legal Aid Agency, 're: Public Accounts Committee Value for Money from Legal Aid – 25 March oral evidence follow up', 3 April 2024. Available at: <https://committees.parliament.uk/publications/44177/documents/219841/default/>.

⁴¹ Committee of Public Accounts (2024) Value for money from legal aid. Thirty-Third Report of Session 2023-24. Available at: <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubacc/481/report.html#heading-1>.

Costs to HMCTS

Hypothesis to test: difficulties that appellants face accessing legal representation increases costs for HMCTS.

Existing research identifies the need for data on legal representation across all tribunals, as well as the duration of hearings.⁴² The National Audit Office reports that the Ministry of Justice and HMCTS have done some limited research on the impact of litigants-in-person in family courts, although there is no data on the length of hearings and the research is unable to account for the impact of the complexity of cases on the length of hearings.⁴³ Similar questions should be asked for immigration tribunals: what is the relationship between legal representation and the length of hearings? Does an absence of legal representation lead to a higher number

of adjournments? Does the accessibility of legal aid have an effect on waiting times for appellants or the outcomes of appeals? Delays to hearings may also have wider economic costs, for example where this slows the possibility of integration or where individuals are in receipt of statutory support from local authorities.

The Immigration Law Practitioner's Association recently wrote to the President of the First-Tier Tribunal (Immigration and Asylum Chamber) (FTIAC), requesting that HMCTS collect data on unrepresented appellants, delays caused by lack of representation, and the outcomes of these cases.⁴⁴ The response from Judge Melanie Plimmer, the President of the FTIAC, notes that at present data is not collected regarding levels of unrepresented appellants.⁴⁵

DATA REQUIRED	IS THE DATA CURRENTLY PUBLISHED?	WHO COULD COLLECT THIS DATA?
Number of immigration appeals heard with legal representation and without legal representation. Length of hearings and outcomes of appeals with and without legal representation.	No	HMCTS
Number of immigration appeals adjourned due to the absence of legal representation.	No	HMCTS
Appeal waiting times including breakdown for represented and unrepresented cases, and adjournments.	No	HMCTS NB: average waiting times and adjournments currently published at https://www.gov.uk/government/collections/tribunals-statistics

⁴² Byrom, N. (2024) Where has my justice gone? Current issues in access to justice in England and Wales. Available at: <https://www.nuffieldfoundation.org/wp-content/uploads/2024/Where-has-my-justice-gone.pdf>

⁴³ National Audit Office (2024) Government's management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>.

⁴⁴ Immigration Law Practitioner's Association (2024) Correspondence by email from Zoe Bantleman to Judge Melanie Plimmer, 'supporting litigants-in-person in the legal aid crisis', 8 April 2024. Available at: <https://ilpa.org.uk/wp-content/uploads/2024/04/2024.04.08-Letter-to-Judge-Plimmer-Supporting-Litigants-in-Person-in-the-Legal-Aid-Crisis.docx.pdf>.

⁴⁵ Court and Tribunals Judiciary (2024) Correspondence by email from Judge Melanie Plimmer to Zoe Bantleman 'supporting litigants-in-person', 19 April 2024. Available at: <https://ilpa.org.uk/wp-content/uploads/2024/04/Judge-Plimmer-Letter-to-ILPA-19.4.24.pdf>.



Costs to local authorities

Without access to legal aid, some people become destitute. This can be for a variety of reasons, including where people are subject to the no recourse to public funds policy and are unable to access advice to challenge this,⁴⁶ or where individuals do not have leave to remain.⁴⁷ Insecure immigration status prevents access to other 'essential services', which include 'non-emergency health care, bank accounts, rented accommodation, driving licences and welfare benefits'.⁴⁸ Private legal fees are out of reach for many people who work, even if they might not usually be considered 'low income'.⁴⁹

Hypothesis to test: costs to local authorities where immigration legal aid is not available exceed the savings made by cuts to the budget for immigration legal aid.

In cases where individuals have certain types of immigration status or no immigration status and are destitute, there are legal duties that require local authorities to provide assistance to meet people's immediate needs. The key groups that fall into this category are children in care/care leavers, adults with social care needs and families with children who have no recourse to public funds.⁵⁰

Where local authorities pay for temporary accommodation and provide financial support to individuals and families there are significant costs e.g. an example reported by the National Audit Office demonstrates that 72 local authorities provided support to 3,423 households with no recourse to public funds at a total cost of £64 million in 2021-22.⁵¹ Research published by COMPAS on migrant

destitution demonstrates that there are a range of different categories of people who may be entitled to local authority support, but many local authorities collect limited or no data on those who access statutory support due to immigration status or no recourse to public funds.⁵² Improving immigration legal aid provision is not necessarily the only, or most appropriate, solution to lessen the burden on local authorities in every case. For example, recommendations arising from the COMPAS research on migrant destitution include making changes to Home Office decision-making, and providing support to people with particular types of time limited leave to remain (such as Ukrainian nationals and EEA nationals with pre-settled status) to upgrade leave to remain or status as it expires.⁵³ Better and more systematic data collection would, however, help to demonstrate the categories of immigration status that place pressure on local authorities and government departments outside of the Ministry of Justice, and improved data could expose where access to immigration advice would help to alleviate these pressures.

46 Leon, L. and Broadhead, J. (2024) Understanding migrant destitution in the UK: research findings. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/UMDUK-Research-Findings-2024.pdf>.

47 Wilding, J. (2023) Ten years of LASPO: immigration legal aid now and the cost shifting effects of austerity cuts. *Journal of Immigration, Asylum and Nationality Law* 37(3) 221-238.

48 O'Nions, H. (2020) 'Fat cat' lawyers and 'illegal' migrants: the impact of intersecting hostilities and toxic narratives on access to justice. *Journal of Social Welfare and Family Law* 42(3)319-340. Page 320.

49 Rourke, D. (2022) The civil legal aid means test: a system still failing those who need it most. Available at: <file:///C:/Users/egm209/Zotero/storage/5LRPCBJD/the-civil-legal-aid-means-test-a-system-still-failing-those-who-need-it-most.html>.

50 Wilding, J. (2023) 'It's a no-brainer': local authority funding for immigration legal advice in the UK. Available at: <https://justice-together.org.uk/wp-content/uploads/2023/05/JT-Local-authority-funding-for-immigration-v3.pdf>; Leon, L. and Broadhead, J. (2024) Understanding migrant destitution in the UK: research findings. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/UMDUK-Research-Findings-2024.pdf>.

51 National Audit Office (2024) Government's management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>.

52 Leon, L. and Broadhead, J. (2024) Understanding migrant destitution in the UK: research findings. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/UMDUK-Research-Findings-2024.pdf>.

53 Leon, L. and Broadhead, J. (2024) Understanding migrant destitution in the UK: research findings. Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/UMDUK-Research-Findings-2024.pdf>.

Costs are also shifted to other parts of government, including local authorities, where the demand for immigration legal aid is high, but provision is unable to meet this demand. Economies of scale matter: local authorities may simply lack the resources and infrastructure to provide these services efficiently, and therefore it is important to distinguish between the gains from choosing the right entity to provide a service, and which services should be provided. Research by Dr Jo Wilding demonstrates that the high costs of providing support where there is a statutory duty mean that in some cases local authorities pay for legal advice and representation, as this is a more cost effective solution than, for instance, funding temporary accommodation.⁵⁴

The Greater London Authority provides funding for immigration advice through its Migrant Advice and Support Fund.⁵⁵ Some local authorities focus on the provision of immigration advice to people rough sleeping because immigration status can be a barrier to accessing any other services, and use funding from the Department for Levelling Up, Housing and Communities to pay for this.⁵⁶ The Welsh Government also funds legal advice through the Asylum Rights Programme, which provides grants to third sector organisations.⁵⁷ These are the types of cost that can potentially be measured, but the government has not collected or analysed data in any systematic way to improve understanding of how or where these costs are distributed.

DATA REQUIRED	IS THE DATA CURRENTLY PUBLISHED?	WHO COULD COLLECT THIS DATA?
Total expenditure by local authorities and other government departments or devolved government on alternative forms of immigration advice provision e.g. including direct payments for private advice, in-house advice provision and funding to local charities.	No	Local authorities Department for Levelling Up, Housing and Communities Welsh Government
Local authority expenditure on statutory support for people with different categories of immigration status, including financial support and temporary housing costs e.g. how many people are in temporary accommodation due to no recourse to public funds or being without leave to remain, and for how long.	No	Department for Levelling Up, Housing and Communities and local authorities

Costs to health services

The National Audit Office review of legal aid reports that the changes to legal aid under LASPO have increased pressure on health services, for example due to the mental toll on individuals where they cannot resolve their legal issues.⁵⁸ Research by the Legal Services Board and the Law Society demonstrates that unmet legal need has a significant impact on individuals, including stress and ill-health.⁵⁹ Professor Dame Hazel Genn and Sarah Beardon at UCL emphasise the importance of free legal services for improving health outcomes.⁶⁰

Hypothesis to test: immigration legal aid helps people to resolve their immigration issues more quickly, which has potential direct cost benefits for health services as well as wider social benefits.

The connection between immigration legal aid and potential cost benefits for health services are likely to

be difficult to measure but are important mechanisms to test when assessing the overall effect of LASPO. One direct cost to hospitals at present, which research by Dr Jo Wilding identifies, is that hospitals face delays discharging individuals with insecure immigration status who have no accommodation and no recourse to public funds, although NHS England no longer provides data on the cost of such delays.⁶¹

DATA REQUIRED	IS THE DATA CURRENTLY PUBLISHED?	WHO COULD COLLECT THIS DATA?
Number of hospital discharges delayed due to immigration status (including where leave applications need to be made) with costs per day/per delay.	No	NHS England



58 National Audit Office (2024) Government’s management of legal aid. Session 2023-24. 9 February 2024. HC 514. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>.
 59 Legal Services Board and the Law Society (2019) Legal needs of individuals in England and Wales. Available at: <https://legalservicesboard.org.uk/wp-content/uploads/2020/01/Legal-Needs-of-Individuals-Technical-Report-Final-January-2020.pdf>.
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 61 Wilding, J. (2023) ‘It’s a no-brainer’: local authority funding for immigration legal advice in the UK. Available at: <https://justice-together.org.uk/wp-content/uploads/2023/05/JT-Local-authority-funding-for-immigration-v3.pdf>.

Conclusion

Where legal aid is inaccessible, there are significant economic and social costs that must be acknowledged. Given that the aim of LASPO was to deliver better value for money, there is an urgent need to improve understanding of whether this objective has been delivered. Although this report has focused on immigration legal aid, there remains uncertainty about whether LASPO has met its objectives across all areas of publicly funded law.

This report has outlined some key areas where data are currently unavailable and where better collection and publication of data would enable the hypotheses generated through qualitative evidence to be measured. To assess whether LASPO has in fact delivered value for money, there needs to be more detailed analysis of both the cost of reversing LASPO and widening the scope of immigration legal aid, as well as the potential savings across other parts of government. Understanding the full costs of LASPO is an essential part of improving governance and ensuring value for money for taxpayers.

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