



Public
Law
Project

Public Law Project's response to 'Civil legal aid: Towards a sustainable future'

March 2025

Public Law Project

1. Public Law Project is a national charity that was set up to ensure those marginalised through poverty, discrimination or other disadvantage have access to public law remedies where they have been affected by unlawful state decision-making. We do this through legal advice and representation, research, policy advocacy, communications and influencing, and training and events.
2. This consultation response draws on both our experiences as a legal aid provider with an Immigration and Asylum contract, and our research into the sustainability of the legal aid sector.

Civil legal aid fee proposal principles

Question 1) Do you agree with our principles for setting fee levels within civil legal aid?

Please state yes/no/maybe/do not know and provide reasons.

3. Yes.
4. Ensuring sustainability for providers and high-quality advice for clients, simplifying the fee schemes, and offering a fair price for advice are all essential components of a functional legal aid system.
5. Whilst we largely agree that these principles are valuable guidance for setting fee levels within civil legal aid, we suggest that principles two and four require further additions, and that a fifth principle should be added.
6. Firstly, we recommend that the second principle makes clear that ensuring high quality provision is based on the Lord Chancellor's statutory duty to ensure that legal aid is made available in accordance with Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This is the fundamental principle that should underpin the other principles outlined here.
7. Secondly, more clarity is needed regarding the reference to 'incentivise efficient delivery models' in the fourth principle. Efficient delivery and value for money for the taxpayer are important principles, but we are concerned that at present the legal aid system prioritises efficiency over quality and that this is entrenched further through this principle. Currently the legal aid system, and in particular the nature of fixed fees, incentivises providers to avoid undertaking work 'at risk' of not being paid. The fixed fee model is poorly fitted to a typical case and very often does not fully remunerate providers for the work they do. Instead, fixed fees are likely to either incentivise bad practice or disincentivise providers. We recommend that the fourth principle needs clarity on how a commitment to efficiency will also ensure quality advice provision,

and suggest that the fee increase and maintenance of a fixed fee structure proposed in this consultation needs to be evaluated against these principles. We consider that a fixed fee model will not be able to deliver a sustainable legal aid system aligned with the principles outlined in this proposal and that increasing the existing fixed fee will not be sufficient to address the structural inadequacies of this model of remuneration.

8. Thirdly, in addition to these principles, we suggest that legal aid fee proposals should be based on robust and representative benchmarking exercises to ensure that they reflect the fee levels that a majority of immigration providers would find sustainable. We are concerned that the method for calculating the fee levels is, as outlined in the consultation document, based on data representing 13-14% of the housing legal aid market and 1-2% of the family legal aid market, and did not assess any immigration providers at all, beyond supplementary evidence from two immigration providers who suggested that 'rates of around £60ph would enable them to break even.' Two immigration providers represent just less than 1% of the immigration provider base and we are concerned that this is not an appropriate sample size on which to base these important reforms and does not embed good practice for the future fee reviews which will be essential. To this end, we recommend the addition of a fifth principle which would commit to conducting robust and representative benchmarking exercises by an independent fee review panel at regular intervals to ensure fee proposals are able to deliver on the other four principles.

Housing and Immigration fee increase

Question 2) Do you agree that we should increase the fees paid for Housing and Immigration work? Please state yes/no/maybe/do not know and provide reasons.

9. Yes.
10. We commend the current increase in fees and consider this to be an important step forward in putting the legal aid sector back onto a sustainable footing. This is urgent work and the consequences of inaction are grave. In the context of a five year high in deportation flights, if people are unable to access quality legal advice within a reasonable timeframe, the risk of people being unlawfully detained or deported is significant.¹ Without an effective legal aid system, there can be no functional immigration and asylum system and we recommend that the Ministry of Justice

¹ <https://www.gov.uk/government/news/government-removes-highest-number-of-illegal-migrants-in-5-years#:~:text=News%20story-,Government%20removes%20highest%20number%20of%20illegal%20migrants%20in%205%20years,smashed%2C%20with%2016%2C400%20people%20removed.>

continues to work closely with the Home Office to ensure that there is the advice sector and justice system infrastructure to support Home Office policy.

11. However, for the first principle to be realised and the advice sector to be sustainable in the long term, processes must be established to prevent the sector from again getting to the brink of collapse.
12. In addition to this proposal, we recommend, firstly, that civil legal aid fees are reviewed annually by an independent fee review panel established for this purpose. Secondly, we suggest that better feedback loops need to be established to monitor whether the proposed fee increase has had the desired effect of increasing sector capacity. To this end, we recommend that the Legal Aid Agency is given a mandate and resources to monitor unmet legal need and meaningful levels of sector capacity. Thirdly, we recommend that fixed fees are replaced by hourly rates to ensure that providers are paid for the work that they do and that good practice is incentivised. Audit mechanisms could address any concerns that hourly rates generate supplier induced demand.

Rate of fee increase

Question 3) Do you agree that fees for Housing and Immigration work should be increased to a minimum hourly rate of £65.35/£69.30 (outside London/inside London)? Please state yes/no/maybe /do not know and provide reasons.

13. Yes, as a minimum.
14. This increase is a much-needed stepping stone towards rebuilding a sustainable civil legal aid provider ecosystem. We consider the increased rate to be at a potentially stabilising level but would not enable longer term rebuilding of the sector.
15. We are concerned that the sector has lost significant numbers of practitioners in recent years to better remunerated work in charities, the commercial sector, and the Government Legal Department. Our experiences reflect those outlined in the Review of Civil Legal Aid 'Provider Overview' published by the Ministry of Justice in November 2024, ² which shows that there are few practitioners from younger cohorts doing immigration legal aid work and the bulk of the work is increasingly undertaken by an older cohort of practitioners. This fee increase may stabilise the loss of practitioners and providers from the sector, but the recommendations outlined in our

² <https://assets.publishing.service.gov.uk/media/6746f8782f94bef8ff48bfe2/provider-overview.pdf>

responses to questions one and two are essential for rebuilding sector capacity in the longer term.

16. Our small size as a provider and our charitable status means that we only have a relatively low volume of casework. Therefore, we do not need to make a profit, unlike for-profit providers who will not be incentivised to work at unprofitable rates. The legal aid fees we receive are subsidised by our grant funding and it is likely that without this additional funding from outside the legal aid scheme, even these increased fees would not yet enable us to fully recover our costs. Much of the work we conduct, particularly when on-boarding a new client, is essential but non-chargeable. This financial model is appropriate for an organisation like Public Law Project, but we consider that on a broader scale, providers needing to subsidise legal aid fees with charitable funding is not a sustainable basis for an effective legal aid system.
17. We recognise that providers who, unlike us, are wholly or largely dependent on the volume of legal aid work they can take on and its profitability may have differing views on the proposals contained in this consultation and the consultation process should seek to understand a wide range of experiences.

Question 3a) If the fee is already above this rate, do you agree that rates should be increased by 10%? Please state yes/no/maybe /do not know and provide reasons.

18. Maybe, for the reasons stated above regarding sector sustainability.

Question 4) Do you agree that the minimum hourly rates for Controlled and Licensed Work should be the same? Please state yes/no/maybe /do not know and provide reasons.

19. Maybe.
20. Controlled work is often complex, and it is right that this is recognised. Interpreter and expert rates also need to be increased as part of this package.

Question 5) Do you agree that our proposed rates will enable legal aid providers to undertake increased volumes of legal aid work? Please state yes/no/maybe /do not know and provide reasons.

21. Maybe.
22. It is likely that it will take some time before the effects of a fee increase are realised. The crisis in recruitment and retention will take some years to be addressed and we suspect may get worse before it improves.

23. It will be important that the extent to which providers are able to take on increased volumes of cases is monitored by the Legal Aid Agency. We have recommended that the Legal Aid Agency should be resourced to do so in response to question two. In addition, it is essential that that civil legal aid fees are reviewed annually by an independent fee review panel established for this purpose. The proposed fee increase is unlikely to have much effect unless legal aid rates are kept under review and increased in line with financial realities for providers. Providers also need the certainty that a regular review mechanism could provide. As part of this robust and rigorous benchmarking exercise, there needs to be clear reasoning for the benchmarking applied to London/ outside London rates.

Question 6) Do you agree that increases to Immigration should be implemented first?

Please state yes/no/maybe /do not know and provide reasons.

24. Do not know.

25. We have a contract in immigration law, but we do not have a contract in housing law and so cannot compare whether an uplift in immigration or housing is more urgent. However, we do consider that the impacts of people not having access to immigration advice are particularly grave, as their cases may pertain to questions of life and liberty.

26. We also consider that all of civil legal aid, including areas such as community care, are in urgent need of fee uplifts. The Review of Civil Legal Aid 'deep dive' publications starkly indicate this need. We are concerned that by only increasing fees in housing and immigration law, providers who work across civil legal aid areas will be incentivised to undertake work at these higher rates, potentially to the detriment of areas of law outside of housing and immigration. We recognise the Ministry of Justice's commitment to consider the fees paid in other categories of civil legal aid as part of the second phase of the Government's spending review due in Spring 2025 and urge them to do so as a matter of urgency.

Fee harmonisation

Question 7) Do you agree with simplifying the fee system by harmonising the fees identified? Please state yes/no/maybe/ do not know. If you would like to give specific feedback on each proposal, please structure your answer as follows:

7a) Feedback on harmonising ‘travelling and waiting time’ and ‘attendance at court, conference or tribunal with Counsel’ at 50% of the hourly rate for ‘preparation and attendance’ in Immigration and Housing and/or;

7b) Feedback on uplifting all ‘routine letters out and telephone calls’ in Immigration and Housing to the highest value present after the uplift occurs

27. Maybe.

28. We agree with harmonising these fees, but are concerned that remuneration at 50% of the viable hourly rate, by nature will not be viable. In order to tackle legal advice deserts, practitioners may need to travel further and the Ministry of Justice should be seeking to incentivise this by remunerating the full hourly rate that it has identified as viable. Fundamentally it costs providers the same amount to employ a practitioner regardless of the specific activity they are undertaking, and this must be reflected in fee rates.

Equalities impacts

Question 8) Do you agree that we have correctly identified the range and extent of the equalities impacts for the increases in fees for providers set out above? Please state yes/no/maybe/don’t know and give reasons. If possible, please supply evidence of further equalities impacts as appropriate.

29. Maybe.

30. We agree with the assessment that the fee increase proposal ‘does not treat people differently on the basis of a protected characteristic’. The greater risk for direct or indirect discrimination lies in the evidence gathering proposals in Chapter 2. As the Equalities Statement identifies, ‘some clients who need face-to-face advice will also have protected characteristics’ and we consider that protected characteristics are likely to be especially prevalent in the cohort of people who require face-to-face advice. As part of any future expansion of remote advice provision a careful assessment of the equalities impacts will need to be conducted.

Removing or reducing restrictions on remote provision of legal advice

Question 9) Should we remove or reduce limits to the number of Controlled Work Matters where the client does not attend the provider's office to make an application for Controlled Work? Please state yes/no/maybe/do not know and give reasons.

31. Maybe.
32. We consider that removing or reducing limits to the number of Controlled Work Matters where the client does not attend the provider's office may offer providers helpful flexibility and, in turn, clients greater access to legal advice. We note that this proposal relates specifically to Controlled Work Matters and therefore providers may use this flexibility to sign up clients who live within their procurement area and who they then go on to advise in person, in addition to signing up and advising clients outside their procurement area remotely.
33. However, we are concerned that in the context of a legal aid system that, even with these increased fees, remains one that is difficult to build a financially sustainable legal aid practice in, remote advice may be attractive to providers as a cost-efficient way of delivering advice and client needs may be sidelined. There is also the risk of providers 'cherry-picking' simpler cases from a wider pool outside of their local procurement area, leaving the few remaining local providers in deficit areas with the most complex cases and therefore proactively disadvantaging providers who do pay for physical offices in deficit areas.
34. Ideally, clients would have the choice of both providers and mode of advice delivery, so that their individual needs can be taken into account and to balance out potential provider incentive towards remote advice. However, there is a significant shortfall of provider capacity to meet demand and in the short- to medium-term this is unlikely to change sufficiently to facilitate this choice. In addition, clients will necessarily have less choice of providers in advice deserts and a wider adoption of remote advice delivery would obscure the depth of these advice deserts and potentially detract from efforts to build local provider capacity that could offer in-person advice.
35. We also have concerns that removing or reducing limits to the number of Controlled Work Matters where the client does not attend the provider's office may not facilitate the matching of supply and demand as hoped. The under-provision in advice desert areas cannot be mitigated through the provision of remote advice by providers located in other regions, as there is no surplus of provision elsewhere in the system and remote delivery of advice is unsuitable for some individuals.

36. We have highlighted this issue specifically in south west England,³ where the published remote access provider list repeatedly demonstrated limited capacity. On average across all 12 rounds of calls we made to this list of providers, 20% of providers had capacity, but not for asylum appeals, and 11% of providers had capacity, including for asylum appeals. It is essential that the Legal Aid Agency meaningfully monitor the efficacy of the current remote access provider lists, as well as build in robust systems to monitor how effective any future shifts towards greater remote advice provision are in terms of addressing provider capacity gaps.

Question 9a) Thinking about the limit on Controlled Work applications that can be delivered remotely, in what ways does this affect your ability to deliver face-to-face and remote advice, based on client need? You may choose more than one:

i) it is sufficient (explain why)

ii) it creates problems (explain why)

iii) other (please specify)

37. It is sufficient.

38. Delivering advice where our clients do not attend our office has enabled us to provide advice around the UK, as well as in Immigration Removal Centres and prisons. It has allowed us to advise people who would otherwise not have access to a solicitor. The current limits have been suitable for our practice.

39. For some clients we have represented remote advice may be the only practicable way in which we can take instructions from them and advise. This includes clients who have been unlawfully removed or excluded from the UK, clients who are in detention in IRCs or prisons which are difficult to reach, and clients where instructions are urgently needed and it is not possible to attend the office in time. In addition, at times we have used remote advice because it is convenient and suits all parties.

40. However, for clients who are in a position to attend a provider's office, face to face contact is usually essential in order to develop the individual's relationship of trust with their solicitor and the best circumstances for the fullest instructions to be given.

³ Hynes, J. & Summers, J. (2024) Access to immigration legal aid in south-west England, 2024: New depths of an ocean of unmet need?

https://publiclawproject.org.uk/content/uploads/2025/01/250109_New-Depths-v3_Final-w-logos.pdf

The degree of face-to-face contact that each client will need will depend on the circumstances. In our experiences, vulnerable clients, particularly those who have been traumatised by their experiences, those who may raise safeguarding concerns, those who need additional support due to their young age or other vulnerabilities, will almost always need to attend the office when possible, because they otherwise will struggle to give instructions. It is therefore important that clients, particularly those with such needs, have access to face-to-face advice.

Question 9b) If there were a removal or reduction in these limits, do you anticipate that in the areas in which you provide legal aid help and advice, your firm or organisation would:

- i) Provide more advice remotely? By what approximate percentage?***
- ii) Provide less advice remotely? By what approximate percentage?***
- iii) Not change the overall percentages for your provision of remote advice?***
- iv) Unsure/do not know.***

Please also provide any data or evidence you may have in relation to your answer.

41. Unsure/ do not know.

42. We do not believe that the limits have affected our work to date, but that is likely to be because we are a low volume provider with limited capacity, and therefore rarely take on new work. For our work, it does not generally matter where clients are based and we are almost always connected with clients through our referral sources. As a result, provided we feel we could properly represent individuals remotely, a removal or reduction in the limit on Controlled Work applications that can be delivered remotely may enable us to take on more cases from outside of London. The extent to which this happens in practice would depend on where the client happens to be based and whether we can properly act for them remotely.

Question 10) RoCLA evidence included feedback that providers are best placed to determine when clients need face-to-face advice, and where remote advice is appropriate. However, there is a risk that providers may move towards remote advice provision in a way that leaves clients who need face-to-face with difficulty finding a provider. When ensuring greater flexibility to provide remote advice, what measures or safeguards would help ensure that clients are not turned down or de-prioritised, because they require face-to-face?

43. We have real concerns that, as identified in this consultation, greater remote advice provision may reduce the availability of face-to-face advice. As highlighted in a 2023 Ministry of Justice research report, *'Blended Advice and Access to Justice'*,⁴ '[f]ace-to-face interactions will always be needed by some clients'.
44. This finding is reflected in our recent report, *'Remote immigration and asylum advice: what we know and what we need to know'*, where we identified mixed views on the value of remote advice.⁵ As part of this research, we interviewed ten refugees and people seeking asylum with experience of both in-person and remote advice and found that:
- a. Remote advice was more convenient for some legal aid providers and clients, particularly for short consultations and for clients who had medical conditions which made travelling difficult or who felt remote calls enabled them to speak more anonymously.
 - b. Remote advice was suitable for some types of conversations and some people, but clients need to be able to make an informed decision about whether remote or in-person advice is most appropriate for their circumstances. For this to be a meaningful choice, providers need to be able to offer remote and in-person advice.
 - c. Remote advice was likely to be inappropriate when clients had not met their solicitor at all, when they were experiencing significant mental health issues, when they did not have a private, quiet space, or when it was not their choice.
 - d. Building trust between a client and their legal representative was perceived as easier in-person, but once trust had been established it made any future

⁴ Mant, J., Newman, D. & O'Shea, D. (2023) *Blended Advice and Access to Justice*. Ministry of Justice. <https://assets.publishing.service.gov.uk/media/642569452fa8480013ec0fac/blendedadvice-access-justice.pdf>

⁵ Hynes, J. (2024) *Remote immigration and asylum advice: what we know and what we need to know*. Public Law Project. <https://publiclawproject.org.uk/content/uploads/2024/09/Remote-immigration-and-asylum-advice.pdf>

remote interactions easier. Establishing this trust through emotional support and reassurance was vital in allowing interviewees to feel comfortable enough to share their stories fully. Remote advice therefore worked best when clients already had an established relationship with their legal representative.

- e. Many of the challenges and barriers generated by remote advice were a result of the wider issues in the collapse of legal aid provider capacity and were often obstacles that cut across all modes of advice delivery.

45. Firstly, an important safeguard to protect clients who need face-to-face advice are fees that are at a sustainable level to allow providers to offer both forms of advice delivery and to allow them to make an assessment based on client needs on a case-by-case basis. The risk with removing or reducing limits to the number of Controlled Work Matters where the client does not attend the provider's office is that providers, in the absence of a legal aid system that allows them to sustain a practice on legal aid fees alone, necessarily find other ways to make legal aid work practicable, such as only offering advice remotely. This fee uplift, if it is reviewed regularly as recommended in our response to question 2, will be an important safeguard against this.

46. Secondly, the Ministry of Justice should establish best practice guidance for remote advice. Recognising the existing time, financial and administrative pressures that advice providers are under, any remote advice quality standards will be most useful to providers and their clients if they are implemented as best practice guidance. This should be developed in consultation with a broad range of legal aid providers, clients and other people involved in remote advice interactions, including interpreters. Many providers will already be ensuring that these elements are in place before a remote advice interaction and there will undoubtedly be further best practice learning that could be shared across the sector.

47. We suggest this best practice guidance could include the following factors:

- a. Client's environment
 - i. The client has the technical skills, resources and confidence to engage fully in a remote advice interaction.
 - ii. The client has a quiet, private space from which to phone or video call their legal representative. They confirm that they feel comfortable speaking freely from this space.

- iii. If they require an interpreter, the technology the client has available facilitates an interpreter joining and being able to offer clear, effective interpretation.
- b. Legal advice provision
 - i. The provider has arranged specific times to speak with the client that are mutually convenient, wherever possible.
 - ii. The provider is able to offer clients a first meeting in-person, and thereafter, is able to give the client a choice of in-person or remote advice. As the research highlights, this needs to be a meaningful choice, and therefore providers need the capacity to be able to offer in-person and remote advice.
 - iii. The provider has protocols in place to offer support or signpost to external sources of support if a client becomes distressed during a remote call. They have capacity to check that the client accessed this support and is safe. The provider has trained its staff to identify common signs of distress or crisis, both within an advice setting and in their initial interactions with a client to assess whether they are suitable to receive advice remotely.

Question 11) Which categories or areas of law do you practice in (or have experience in), that you have drawn from when answering questions 9 and 10?

48. Public law, and Immigration and Asylum law. Most of our expertise and experience is in public law.

Removing or reducing requirements for providers to have permanent offices in Standard Civil Contracts for legal aid

Question 12) Would you want the contractual requirement for permanent office locations to be reduced or removed? Please state yes/no/maybe /do not know and provide reasons.

49. Maybe.

50. More flexibility for permanent offices and staffing requirements could allow more in-person advice delivery from temporary locations and could be beneficial for both providers and clients. However, there is a clear need for there to be providers where people are able to walk in and receive legal advice, which requires both permanent office locations and provider capacity.

51. The overall need is for clients to have access to adequate legal advice. It follows that if removing or reducing requirements for providers to have permanent offices leads to an increase of provision of legal advice then this proposal could be desirable. In addition, there is a shortage of expert legal advice generally and this proposal could make this more accessible. However, almost all clients will need some face-to-face contact with their solicitor and the extent of this need will vary. Therefore, the solicitor's office must be accessible to the client and their travel expenses would need to be met to enable them to see their solicitor. Our concern is that, as we have outlined in response to question nine, a remote provider's list will not remedy a lack of permanent offices in a particular area and the most sustainable way to increase provider capacity is to develop legal aid firms who do have a permanent office location in legal aid deserts.

Question 13) Does the requirement for a permanent office provide sufficient flexibility for the availability of civil legal aid advice based on your experience of client need in any category of law?

52. The lack of flexibility on the staffing requirements is not beneficial to client needs and is unhelpful for providers; our office must be staffed to allow people to walk in, but in practice we generally do not have the capacity to take on walk-in clients.
53. We do not believe that providers need to have a staffed office for five days a week for the hours specified in order to provide an effective service for clients. In addition, it depends on the area of law and types of legal problems as to what staffing requirements are needed, but in a world of hybrid working, it is generally not realistic to expect providers to maintain an office which is open five days a week.
54. Current staffing requirements can increase overheads, because providers are likely to need to have more than one person in the office at all times to prevent lone working, as well needing as some form of reception if the building is otherwise not staffed in addition to the lawyer. It also prevents providers from potentially sharing office space with another organisation where they might only have access to a meeting room for certain days, but not the full five.
55. The only reason for the current staffing requirements is to enable clients to 'walk-in', as face to face meetings will be by appointment and could be scheduled on days on which the office is open. However, not all areas of law have the same need for clients to be able to 'walk-in' without an appointment and many providers do not currently

have the capacity to offer this service given that demand consistently outstrips supply to such a significant degree.

Question 13a) Where the requirement doesn't provide sufficient flexibility, in your experience, what is the impact on delivery of legal advice to clients?

56. For our legal aid practice, the current requirements regarding permanent offices provide sufficient flexibility to meet our client needs.

Question 14) If there were a change to the requirement for a permanent office, what measures or safeguards would help ensure we meet the need for clients to have access to face-to-face civil legal advice in a safe, private and accessible environment be ensured?

57. If there were to be a change to the requirements for providers to have permanent offices, it would be imperative that the Legal Aid Agency monitor how this change affects the provider base in each procurement area and are able to respond to changes swiftly. Thresholds of a minimum percentage of providers with permanent offices in each procurement area should be established in consultation with providers.

58. Our concern is that some clients may be inhibited or unable to give instructions because they cannot do so confidentially in a remote setting, in the way that they would be able to in a solicitor's office. Access to justice requires legal advice to be given confidentially, so any arrangements for the provision of legal advice should allow for clients to have access to a confidential environment such as a solicitor's office if they need it.

59. The safeguards outlined in response to question 10 will also be important for this proposal. In addition, we recommend that the Legal Aid Agency should be able to facilitate attendance at the provider's office by paying for the client's travel and accommodation where necessary.