



Ministry
of Justice

Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

February 2019

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Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

February 2019



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Foreword

The Rt Hon David Gauke MP

Lord Chancellor and Secretary of State for Justice



Part 1 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, along with its secondary legislation, was introduced with the aim of targeting limited resources at the most vulnerable, following a long period of expansion of legal aid that resulted in annual spend at the time of over £2bn per annum.

Coming into force in 2013, the then Coalition Government implemented the first significant reforms to the scope of, eligibility for and fees paid under, legal aid in England and Wales for more than a decade.

Given the extent of the changes that LASPO introduced, the Government committed to carrying out a Post-Implementation Review (PIR) of the reforms they had introduced, assessing the impact of the policies against the original objectives of the Act.

Following a year-long process of extensive evidence gathering and analysis, I am pleased to present the outcome of this review.

We have benefited from an extraordinary level of engagement. Working with more than 100 different stakeholders, interested parties, legal aid providers and their representative bodies, the advice sector, judges, academics and parliamentarians, a wealth of research has been gathered to inform this document.

The following chapters summarise that comprehensive process. Analysing the wealth of data and statistics that have emerged since LASPO came into force, as well as the vast range of evidence that was submitted, has taken time. However, it has always been important to ensure that the review struck the right balance between having enough information to assess and form reasoned conclusions, whilst taking place within a suitable interval after the policies were implemented.

The importance of the legislation has fully merited the level of rigour and engagement we have undertaken. The submissions received, alongside the face to face meetings, consultative group sessions and events that we held, have been extremely valuable in giving us the opportunity to look at where we need to go next.

Legal aid plays an important role in enabling access to justice, and last year the Government spent £1.6bn on funding legal aid for those who needed it. However, whilst legal aid is, and will remain, a core element of how we help people resolve their legal problems, what we have heard throughout the review is that it is one part of a bigger

picture. Publicly funded legal aid and representation is the right support in some circumstances, but not all.

This review has highlighted that for too long legal support has been focused solely on funding court disputes, with less emphasis on how problems can be resolved earlier and avoid them escalating into more problematic issues that require a court visit.

Our ambition is to catch problems before this point, intervening at an early stage through services that prioritise the individual and are delivered at the right time, and in the right way for them.

The ability of individuals to resolve their legal issues is vital for a just society, and everyone must have the ability to avail themselves of the justice system when they require it. It is crucial that people should be supported through this process.

The scale of this review has provided us with the opportunity to engage with many interested parties. It is essential this engagement continues and that we collect more evidence, exploring with our partners and stakeholders innovative ways of supporting people to access the justice system and placing early intervention firmly at the heart of legal support.

A handwritten signature in black ink, appearing to read 'David Gauke', written in a cursive style.

The Rt Hon David Gauke MP
Lord Chancellor and Secretary of State for Justice

Executive summary

Overview

1. The ability of individuals to resolve their legal issues is vital for a just society, and everyone must have the ability to avail themselves of the justice system when they require it. It is crucial that people should be supported through this process. A core element of this support is, and will remain, access to publicly funded legal advice and representation where it is necessary. Government provides legal aid in England and Wales to ensure those who need it can access legal advice and representation.
2. In 2013, following a long period of expansion of legal aid beyond its initial intention (spending just over £2bn per annum), and in the context of the economic downturn and consequently constrained budgets across departments, the Coalition Government went back to first principles and implemented a fundamental reform of the scope of, eligibility for, and fees paid under, legal aid.
3. These changes, among other objectives, sought to ensure legal aid would remain sustainable by refocusing on those who most need it and delivering significant savings for the taxpayer. These changes have combined to deliver a system of legal aid which paid out £1.6bn last year.
4. These same principles, which seek to deliver effective, efficient and sustainable legal aid continue to form the parameters of the scheme today. Whilst the legal landscape has changed since LASPO came into force, it remains paramount that those who need legal aid can get it. Nevertheless, where alternative sources of support are available we must explore those options fully. Where such support can be provided early and enable more opportunities for early resolution of problems, we can help many avoid the need for court entirely.
5. This review was set up with the aim of assessing the extent to which LASPO achieved its objectives of delivering significant savings to the cost of the scheme by focusing legal aid on the highest priority cases. Whilst LASPO has met some of its objectives, reviewing the impact of these changes has enabled us to identify a number of challenges we must overcome.
6. It is important to highlight that we have already made changes to legal aid provision since LASPO. For instance, we have broadened the evidence requirements for the domestic violence gateway for certain family proceedings and expanded legal aid scope for prisoners.
7. The review process has emphasised that legal aid is only one part of the picture when considering access to justice. We have heard throughout our engagement process that publicly funded legal advice and representation is the right support in some circumstances but not all.
8. In delivering a modern justice system with the user at its heart, we must think holistically about the people engaging with it and use evidence of what works to prioritise the support services they want. That is why, alongside this document, we have also published an Action Plan in which we detail the range of actions we are

taking forward to ensure that legal aid continues to be available and effective into the future, as part of a wider framework of legal support.¹

9. Our future direction must be focused on supporting early resolution of people's legal problems by embracing new technology and thinking innovatively about how we can improve the services for people across England and Wales. Technology offers the potential to widen access to support and will allow the Government to use money spent on legal aid more wisely.
10. This has been a comprehensive review, and we have looked objectively at what's working, what isn't, and why. This has been fundamental in informing the rationale behind the new direction for legal support, but this is only the first step. There are challenges to overcome, but it is being led by the evidence, and in close cooperation with the people using and providing legal support.

Approach to engagement and evidence capture

11. This has been an open, collaborative and objective review. To complement our own data, the Ministry of Justice undertook a range of engagement to ascertain further LASPO's impact and to inform the PIR. Starting in April 2018, the Ministry of Justice held three rounds of consultative group meetings with a range of interested parties, tasked with considering the impact of the 34 major reforms; how the different users of the justice system interact with legal aid at various points throughout their journey, and how their experience can be improved through innovation, a greater use of technology and more accessible information and guidance.
12. Ministry of Justice officials also held a roundtable with members of the senior judiciary and met individual practitioners and smaller groups of interested parties in order to listen to a broad range of views. The Ministry also received evidence submissions from over 80 organisations which have been carefully considered to inform this review.

Civil and family scope changes (Chapter 1)

LASPO changes

13. Under the Access to Justice Act 1999,² a legal matter was within scope and qualified for legal aid funding, unless it was specifically excluded by the Act.³ LASPO reversed this position and instead listed matters in scope in Schedule 1 of Part 1 of LASPO.⁴ It also provided a route, through an Exceptional Case Funding (ECF) scheme, for people to apply for legal aid in 'cases that do not fall within the scope of civil and family legal aid but where the failure to do so would be a breach of the individual's rights to legal aid under the Human Rights Act 1998 or European Union law, or where there is a significant wider public interest in funding legal representation for inquest cases.'

¹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

² See: <http://www.legislation.gov.uk/ukpga/1999/22/contents>

³ Exceptions included personal injury and damage to property, conveyancing, boundary disputes, defamation or malicious falsehood, the making of wills, trust law and business cases.

⁴ See: <http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

14. The Coalition Government sought to refocus the scope of the civil and family legal aid schemes on those who need it most by removing a number of areas from scope entirely, or amending those areas using specific criteria. For the remaining areas, scope was limited to those the Coalition Government decided were the highest priority cases. In some areas (e.g. other social welfare law matters and clinical negligence) reduced scope extensively, while in others (e.g. actions against the police and public law) smaller amendments removed specific sub-categories from scope.
15. There were also changes made under LASPO to introduce the mandatory elements of the Civil Legal Advice (CLA) Gateway. The CLA Gateway was introduced to provide a simple, straightforward telephone service. Following LASPO, those with a case concerning debt, discrimination (claims relating to a contravention of the Equality Act 2010) and special educational needs could only access further legal advice if they first seek advice over the telephone to determine eligibility.
16. With the availability of legal aid limited in various areas of law, the volumes of publicly funded cases dropped, and expenditure has fallen. In 2017-18, the scope changes saw legal aid spending fall by approximately £90m in civil cases and £160m in family cases, compared to £105m and £130m estimated in the impact assessments (IA) that accompanied the Act.
17. Aside from the overall savings to the scheme, it is important to highlight that in the clinical negligence area the market has adapted due to the increased usage of Conditional Fee Agreements (CFA) which has enabled legal aid to be targeted at other areas. In immigration and asylum, the scope change has been successful at targeting legal aid towards asylum cases, which the Government deemed were the highest priority in this context.
18. However, in the category of actions against the police, legal aid volumes have not fallen as significantly as anticipated in the IA and in the public law category, the scope change has not completely achieved this objective, because legal help volumes have remained broadly similar. In some areas (such as personal injury) the extent of the pre-LASPO decline in case volumes makes it very difficult to identify whether the post-LASPO decline is the result of scope changes introduced in 2013.
19. In social welfare law matters, the volumes of legal aid have declined more than anticipated in the original IA, in all of the respective areas. Whilst this requires further and ongoing monitoring, this trend could be due to a lack of awareness of the availability of legal aid, the clustering of problems, or other external factors.

Key points from the engagement process

20. Whilst the changes to civil and family legal aid scope have delivered significant savings, the engagement phase raised a number of points regarding the wider impact of the changes.
21. *Early intervention is paramount* - Many stakeholders felt that early intervention is key in supporting people resolving their problems and reducing the overall cost to the public purse. Although there have been efforts to try, more evidence is required to quantify the impact of early intervention and develop the case for investment in early intervention, including how it is best delivered.

22. *Clustering* (often those presenting with a legal problem are unlikely to have just one matter of concern) - A hard line between what is in and out of scope leaves people with a solution to some of their cluster of problems, but not all of them. Stakeholders suggested Government should consider embedding legal advice in other services; 'location based legal services', noting that 'one stop shops' can be very effective, user friendly, and would support those with clustered problems.
23. *Self-representation* - Many stakeholders were of the view that, while efforts to simplify and streamline court processes were commendable, the system was not yet sufficiently capable of catering for those without legal representation. Online advice alone was not considered a suitable alternative to legally aided help or representation. Many argued that a variety of other options must be available to cater to the wide variety of people and problems.
24. *Advice deserts* – Some stakeholders asserted that many solicitors had abandoned legal aid work, leading to advice deserts for certain categories of law, particularly immigration and housing. It was noted that advice deserts are more likely to occur in rural areas with people no longer seeking advice because following LASPO they either do not know where to go, or because it is too far to travel.

Government response

25. In response to the concerns raised and ideas suggested, we have set out in the Legal Support Action Plan how we intend to move forward with regard to civil and family legal aid scope.
26. As set out at paragraph 21 above, we have heard strong arguments that early intervention through legal support can often help people resolve their problems without having to resort to legal advice and court. However, we need to establish a more robust evidence base through piloting and evaluating different forms of early legal support.⁵
27. We will explore how web based products, better signposting and join up of support services can provide routes for those seeking help and guidance to resolve their problems. We will also pilot face to face early legal advice in a specific area of social welfare law and evaluate this against technological solutions, and use funding to encourage and support innovation in the delivery of support services in new ways.
28. We are also expanding legal aid scope for separated children in immigration matters; removing the mandatory requirements for those seeking support in discrimination, debt and special educational needs cases through the telephone gateway; and bringing forward proposals to expand the scope of legal aid to cover special guardianship orders in private family law.
29. For those seeking help and support to navigate the justice system, we will enhance the support offered by Ministry of Justice and Her Majesty's Court and Tribunal Service (HMCTS) for litigants in person. We will also work with legal professionals and the advice sector opportunities to explore opportunities to simplify the ECF scheme and ensure it works as effectively as possible.

⁵ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

30. We also recognise that people need to be aware of the availability of support, including legal aid services. We will launch a new campaign to improve awareness of how people can access support to help them resolve their issues (ideally before they become legal problems); and work closely across government, including through existing cross-government groups, to bring together departments and support providers to focus on ways to reduce preventable demand.

Civil and family eligibility changes (chapter 2)

LASPO changes

31. LASPO made four changes to the civil and family eligibility criteria but did not make significant amendments to the overall means testing approach or assessment.
32. The reforms were designed to target the provision of public funding at those in the greatest financial need and ensure those who can afford to pay some or all of their legal costs do so. The reforms were also aimed at reducing unnecessary litigation where the prospects of success were borderline.
33. Following LASPO all applicants for legal aid had to undergo capital means testing; and some people who could afford to pay were asked to contribute more towards their legally aided representation.
34. The regulations made under LASPO also removed those cases with borderline prospects of success from the scope of legal aid; and extended the circumstances where a contested property would be included in the financial eligibility test, to ensure individuals who were disputing the ownership of very expensive properties would not be able to avoid financial scrutiny.
35. The changes to civil and family financial eligibility have contributed to the savings made to the cost of the scheme, although the total amount saved through these changes was always intended to be considerably smaller than that saved through the scope and fee changes (discussed at paragraphs 43 to 52 below and in Chapter 3). Savings in this area were largely driven by the application of the capital means test to all applicants, which has saved an estimated £9m per annum, around the level estimated in the original IA.
36. The changes to the civil and family eligibility criteria have resulted in legal aid being targeted at a smaller cohort of people. Whilst the civil representation grant rate has increased from 82% in 2012-13 to 93% in 2017-18, the volume of applications has fallen significantly.

Key points from the engagement process

37. Evidence submitted as part of the evidence gathering phase suggests that some of those in need have not accessed legal aid either as a result of a higher test or because of the difficulties in obtaining the relevant financial evidence to support an application.
38. With regard to contributions, many have argued (and some have supported with research) throughout the engagement process that the threshold is set at a level that requires many people on low incomes to pay a contribution which they cannot afford while maintaining a socially acceptable standard of living. A number of

interested parties concluded, as was anticipated in the IA, that many people will address their legal problem in a different way as a result, e.g. 'litigation loans', McKenzie Friends, and we have seen a rise in litigants in person in the courts.

39. Aside from the comments raised concerning the specific eligibility reforms, the overwhelming view expressed by those engaged was that LASPO should have fundamentally changed the means testing scheme to align with the cost of current living standards.

Government response

40. In response to the concerns raised and ideas suggested, we have set out in the Legal Support Action Plan⁶ how we intend to move forward with regard to civil and family eligibility.
41. As discussed above, LASPO did not make substantial changes to the eligibility criteria for civil and family legal aid. However, we believe it is the right time to look at the means testing schemes. We will conduct a review into the thresholds for legal aid entitlement, and their interaction with the wider criteria. Whilst the review is ongoing we will continue with current arrangements to passport all recipients of universal credit through the means test.
42. In addition, we are keen to address specific concerns in family legal aid eligibility and will bring forward proposals for extending eligibility for non-means tested legal aid for parents, or those with parental responsibility, who wish to oppose applications for placement orders or adoption orders in public family law proceedings.

Civil and family fee changes (chapter 3)

LASPO changes

43. The Coalition Government proposed to make relatively simple changes to the fees paid in civil and family proceedings, rather than to undertake a complete restructuring of fees. In light of the need to reduce overall spend on legal aid, the Coalition Government believed that it opportunities for further efficiency savings needed consideration.
44. Regulations under LASPO reduced fees paid to lawyers in civil and family matters and made changes to provide greater clarity and control over payments. In addition, the uplifts for some hourly rates were capped or removed and remuneration for pre-permission work on Judicial Reviews was limited.
45. The policies have saved a combined estimated £110m in 2017-18. In some areas, the reforms saved more than was estimated in the relevant IAs. This is largely because of increasing volumes in areas where the fee changes were implemented (such as public family law cases), and hence the fee changes having more opportunities to make a saving.

⁶ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

46. With regard to discouraging unnecessary litigation at public expense, the removal of an uplift in fees for immigration and asylum upper tribunal appeals has placed the onus on the provider to determine whether an appeal has credible prospects of success. Initially, the volume of these cases did not drop, but it has since fallen. It is difficult to isolate the impact of this fee change as there are a number of other factors (such as a variety of reforms to the wider immigration rules) which drive volumes, and hence no robust conclusions can be drawn here.
47. However, the removal of funding for pre-permission stages for unsuccessful judicial reviews has helped reduce unnecessary and adversarial litigation at public expense, although there are again wider reforms that are influencing these trends. The volumes of judicial reviews funded by legal aid has fallen by 20%, although the overall volume of certificates granted for the later stages of the process (i.e. post-permission stage) has increased by 16%.

Key points from engagement process

48. A key concern expressed by stakeholders during engagement is that as a result of the fee reductions the legal profession is no longer attracting the next generation of legal aid lawyers. Young Legal Aid Lawyers reported that low remuneration, combined with high levels of tuition fee debt, was a barrier to entry to the profession.
49. Others argued that *“legal aid rates of pay have made relatively small areas of law such as education law financially unviable unless legally-aided work is heavily supplemented by private practice or charitable funding.”* One practitioner group suggested that *“some firms are now ‘cherry picking’ cases which will bring in money and turn away clients with complicated financial circumstances or loss-making work such as legal help work.”*
50. The advice and third sector have generally reported an increase in demand since LASPO. However, as many argued, these organisations are unable to ‘fill the gaps’ where legal practitioners are absent. Other funding sources, such as local authority funding, have also been reduced and the not-for-profit organisations, working mostly in social welfare and immigration law categories, are said to be leaving the legal aid market.

Government response

51. Total expenditure on civil legal aid work has reduced by 25% since 2012-13 and, as a consequence, the number of providers doing legally aided civil work has fallen by 32% overall (varying between the differing areas of civil law). The average income per civil legal aid provider has increased by 11%. It is also important to note that, in the most recent contract tendering process, with the new contracts having started on 1 September 2018, the number of providers increased to 3568 and increased in all areas of law except clinical negligence. The Legal Aid Agency (LAA) peer review statistics also suggest that the quality of provision has broadly remained the same since LASPO.
52. Whilst the data seems to suggest the market is sustainable at present, there are clearly areas where we need to look further at remuneration in civil and family legal aid. We are keen to first see the results of the pilots set out at paragraphs 26 and 27 above.

Criminal legal aid reforms (chapter 4)

LASPO changes

53. A number of changes were made to criminal legal aid under LASPO, principally concerning the fees paid to solicitors and advocates, but also some changes to eligibility criteria and the provision of legal aid to prisoners.
54. Making significant savings was a key driver behind the criminal legal aid reforms. Criminal legal aid is demand led, as the volume of cases requiring legal aid is largely determined by the number of arrests and crimes prosecuted. In total, we estimate that the fee changes have saved £140m per annum.
55. Since the LASPO reforms (those considered under this review), there has been a steep decrease in legal aid volumes in the magistrates' court and Crown Court. Overall, legal aid grants in the magistrates' court have decreased by 45% from 431,000 to 236,000 between 2010-11 and 2017-18, whilst Litigators' Graduated Fee Scheme (LGFS) volumes (a good proxy for legal aid Crown Court volumes) have fallen by 27% from 130,000 to 95,000 between 2010-11 and 2017-18.
56. Whilst the reduction in volumes described above would ordinarily lead to a similar reduction in spend, we have witnessed increased average case costs in Crown Court legal aid since 2012 due largely to the increased number of cases with high amounts of prosecution evidence.
57. The combined effect of the criminal legal aid reforms under LASPO has delivered significant savings to the cost of the scheme. However, savings are lower than initially predicted because there are fewer cases where a saving could be made.

Key points from the engagement process

58. During the evidence gathering phase it was asserted that the criminal remuneration changes had cumulatively impacted on the sustainability of the criminal legal aid market. Both the Bar Council and The Law Society submitted evidence from their recent surveys that argued 43% of Bar respondents said that their practices had been substantially affected; and for solicitors the impact of the 8.75% fee reduction has increased the likelihood of providers experiencing stress and anxiety. As such, they asserted that providers are now turning to other careers or employers (such as the Crown Prosecution Service (CPS)).
59. In terms of prison law reforms, stakeholders argued that LASPO had simply shifted costs onto other areas of Government, including Her Majesty's Prison and Probation Service (HMPPS), and that the cost of this may outweigh that of corresponding legal aid provision. Isolating the impact of LASPO against a multitude of other variables across the prison system and wider society is complex, meaning there is no clear data available to validate the cost-shifting argument. It is therefore not possible to draw a firm conclusion regarding the extent the prison law scope changes represent overall value for money for the taxpayer.
60. There was anecdotal evidence gathered from our engagement that prisoners still have the same level and type of concerns and do not have confidence in the alternative mechanisms for resolution. We are unable to tell from the data available to us how prisoners are now resolving their issues and whether prisoners are choosing not to seek to challenge an issue.

61. The Joint Committee on Human Rights raised concerns regarding the Government's reliance on alternative dispute resolution mechanisms for prisoners, which have been described as unsuitable and/or ineffective.⁷ The Howard League for Penal Reform and the Prisoners' Advice Service both reported significant increases in calls to their advice lines;⁸ and the Howard League reported the lack of specific legal support available for young prisoners, during and after their prison sentence.
62. Whilst there is limited centrally held data on complaints, the volume of complaints reported to the Prisons and Probation Ombudsman (PPO) has decreased since before LASPO, from 5,291 in 2010-11 to 4,790 in 2017-18.
63. Whilst there was no data submitted to support the argument, the Criminal Bar Association suggested the withdrawal of legal aid has led to an escalation of problems that can lead to further problems or longer sentences for prisoners, resulting in increased Government expenditure. Interested parties and organisations reported difficulties with the ECF scheme, describing it as an inadequate safety net for those prisoners who can no longer access legal aid and asserting that the application process is excessively complex for the average prisoner to complete.
64. The Government has acknowledged that, for certain matters concerning prison law, prisoners should be supported through legal aid and have since made the necessary changes to expand scope.

Government response

65. In response to the concerns raised and ideas suggested, we have set out in the Legal Support Action Plan how we intend to move forward with criminal legal aid fees.⁹
66. Over the course of the last year, we have made a number of reforms to the Advocates' Graduated Fee Scheme (AGFS). Under the most recent changes we increased overall funding on the scheme by £23 million against 2016-17 AGFS spend, focusing this additional spending on more junior advocates.
67. However, we recognise the need to look further and will therefore undertake a broader review of criminal legal aid fee schemes. This is in response to outstanding concerns following the AGFS Scheme 11 consultation, the Justice Select Committee's recent reports on criminal legal aid and disclosure in criminal cases, the Attorney General's review of disclosure, and broader changes across the justice system including the modernisation work being undertaken by the Home Office, police, CPS and HMCTS. The Government believes the time is right for a more holistic review of criminal legal aid fee schemes.

⁷ See: <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/100.pdf>

⁸ See: <http://www.prisonersadvice.org.uk/about/how-we-do-it/>

⁹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

Expert fee changes (chapter 5)

LASPO changes

68. Regulations under LASPO (and the Access to Justice Act beforehand) also reformed the fees paid to experts in civil, family and criminal proceedings, seeking to control spending and ensure fairness and consistency. In summary, the expert fee reforms included codifying guideline hourly expert rates and fees and reducing them by 10% and then, subject to a number of exceptions, by a further 20%.
69. The policies have saved the legal aid fund £30m per annum – in line with the estimate in the IAs. This reduction is driven in part by the changing case mix that has occurred in civil and family legal aid, as the available data suggests that the average spend per case has fallen since the reforms, from an estimated £610 in 2010-11 to an estimated £470 in 2017-18. Moreover, the use of experts also dropped in family cases due to the family law reforms in 2014 (the introduction of the Public Law Outline), although volumes are now increasing.

Key points from engagement process

70. Whilst the expert fee changes have contributed to savings to the cost of the scheme, it has been argued that if the changes have caused availability issues for expert witnesses, the expert fee changes might not have delivered greater overall value for money for the taxpayer. Interested stakeholders explained the difficulty in providing expert evidence at legal aid remuneration rates.

Government response

71. The Government will continue to ensure that every aspect of fee remuneration represents value for money. This includes the fees currently paid to experts. There are processes in place to allow for higher rates in exceptional circumstances.

The disbanding of the Legal Services Commission and the formation of the Legal Aid Agency (chapter 6)

72. The Cabinet Office has published a departmental review of the LAA, based on the LAA's key performance indicators and internal governance.¹⁰ However, several themes have been considered in chapter 6, arising out of the evidence gathering phase and otherwise, to further consider the transition from the Legal Services Commission (LSC) to the LAA. These include the effectiveness of LAA decision making and the loss of several of the LSC's functions, such as conducting research regarding access to justice.
73. Some interested parties expressed concern that the position of the Director of Legal Aid Casework (DLAC) is far too close to Ministers in terms of decision making. The changes made under LASPO were made intentionally to ensure independence and avoid political interference.

¹⁰ See: <https://www.gov.uk/government/organisations/legal-aid-agency/about/our-governance>

Conclusion and Next Steps

74. To help inform the review, we carried out an extensive and open programme of engagement, involving organisations, academics, people who use the legal aid system, and other interested parties from across the justice system. This exercise has highlighted the great work being done in the legal aid sector across England and Wales, as well as an appetite to work collaboratively to find solutions for the future.
75. As set out in the terms of reference for this review,¹¹ supporting data has largely been obtained from internal sources to provide a picture of those interacting with the legal aid system, what cases are being processed, the proportion of successful applications and where expenditure is changing across the legal aid system. However, the review has also highlighted where there are gaps in the information.
76. Alongside this review, we have published a Legal Support Action Plan (referenced throughout this document).¹² Throughout this review we have highlighted the areas where we have strongly heard the views of those we have engaged and where we need to do more, take a different approach or test and pilot some ideas in order to ensure our legal support system is founded on evidence based policy, operates effectively, so that it is fairer for those who need it.
77. Justice is at the centre of a safe, fair and prosperous society and this Government is committed to protecting and guaranteeing access to justice for future generations.

¹¹ See: <https://www.gov.uk/government/publications/post-implementation-review-of-laspo>

¹² See: <https://www.gov.uk/government/publications/legal-support-action-plan>

Introduction

78. LASPO made broad changes within various areas of the departmental portfolio of the Ministry of Justice. LASPO received Royal Assent in May 2012 and its provisions came into force at varying points thereafter.
79. The Act is split into four Parts. Part 1 replaced Part 1 of the Access to Justice Act 1999 as the statutory framework for legal aid in England and Wales and implemented a series of substantial changes to the legal aid system, following a consultation in 2010. Part 2 introduced reforms to civil litigation funding and costs, based on the recommendations of Lord Justice Jackson published in 2009 and a consultation in 2010. Part 3 introduced a variety of provisions associated with the sentencing and punishment of offenders, and Part 4 covers a number of ancillary provisions associated with the Act as a whole.
80. This document serves as the PIR for Part 1 of LASPO. The scope of the review was set out in the Terms of Reference published on gov.uk on 8 March 2018.¹³ The Ministry of Justice made an initial assessment of the Act through a post-legislative memorandum, which was presented to the Justice Select Committee on 30 October 2017.¹⁴
81. A separate PIR of Part 2 of LASPO has been undertaken and published at: <https://www.gov.uk/government/publications/post-implementation-review-of-part-2-of-laspo>

Background

82. Our legal aid system is a fundamental pillar of access to justice. In 2017-18, the Ministry of Justice spent £1.6bn on legal aid: 16% of its total expenditure.
83. In November 2010, the Coalition Government published a consultation paper entitled, 'Proposals for the Reform of Legal Aid in England and Wales' (LAR).¹⁵ The LAR consultation set out a 'radical, wide-ranging and ambitious programme of reform which aims to ensure that legal aid is targeted to those who need it most, for the most serious cases in which legal advice or representation is justified.'
84. In June 2011, the Coalition Government published its response to the consultation,¹⁶ which received over 5,000 responses. The consultation response set out the finalised proposals for the initial reform to the legal aid system. In delivering the reforms, the Coalition Government set out the objectives of discouraging

¹³ See: <https://www.gov.uk/government/publications/post-implementation-review-of-laspo>

¹⁴ See: <https://www.gov.uk/government/publications/legal-aid-sentencing-and-punishment-of-offenders-act-2012-post-legislative-memorandum>

¹⁵ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf

¹⁶ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228890/8072.pdf

unnecessary and adversarial litigation at public expense, re-focussing legal aid at the highest priority cases, and delivering better value for money for the taxpayer.

85. Following the introduction of LASPO, the Coalition Government introduced a second tranche of reforms under the banner of the Legal Aid Transformation programme (LAT). The reforms were set out in a series of consultation documents – ‘Transforming Legal Aid: Delivering a more credible and efficient system’ – with major changes to the remuneration and procurement of criminal legal aid services; changes to eligibility criteria for civil and criminal matters; and changes to rates of pay for advocates in family proceedings.
86. The Coalition Government received nearly 16,000 responses and in addition to this gathered feedback from 14 stakeholder events throughout the consultation period. The LAT consultation response was published on 5 September 2013.¹⁷ In the case of two of the original LAT proposals – those to introduce competitive tendering and the proposed reforms to criminal advocacy fees – it was decided to undertake a second phase of consultation on refined proposals, with the second and final LAT consultation response published in March 2014.
87. LASPO (as well as both LAR and LAT programmes) made changes to the three key components of legal aid provision. First, it altered the scope of legal aid – essentially changing the areas of law for which legal aid funding was generally available. Second, it altered the financial eligibility requirements for an individual seeking legal aid funding. Third, it altered the levels of remuneration for those providing legally aided advice and/or representation. As such, this review considers the three areas separately. The review also considers the provision of civil and family legal aid as distinctly separate to criminal legal aid.

Objectives

88. As set out in the published Terms of Reference for the review, the scope of this review is an assessment of the 34 reforms to legal aid against the four objectives set out in the response to the LAR consultation paper, published in June 2011. The list of the reforms can be found at Annex B.
89. The four objectives were:
 - i. To discourage unnecessary and adversarial litigation at public expense;
 - ii. To target legal aid to those who need it most;
 - iii. To make significant savings to the cost of the scheme; and
 - iv. To deliver better overall value for money for the taxpayer.
90. The package of reforms delivered under the LAT programme and other subsequent amendments, had objectives that accord with one or more of the above.
91. The main change to legal aid associated with LASPO which had objectives beyond these four is the abolition of the LSC and the subsequent creation of the LAA; this

¹⁷ See: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/>

had its own additional bespoke objectives and as such has been considered separately in this review (chapter 6).

Review Methodology

Engagement and evidence capture

92. In recognition of the extensive nature of the changes made by LASPO and subsequent amendments, the Ministry of Justice undertook a range of engagement to further ascertain the impact of LASPO and to inform the PIR. The evidence gathering phase of the review began in April 2018.
93. The review involved three rounds of consultative group meetings with a range of interested parties, including representative bodies, charities, advice providers and academics. The first round (April 2018) considered the impact of the 34 major reforms implemented under Part 1 of LASPO. There were four groups based on jurisdiction – criminal justice, civil justice, family justice and the advice and third sector (covering all three jurisdictions). The second round (July 2018) considered how the different users of the justice system interact with legal aid at various points throughout their journey, and how their experience can be improved. The groups were divided to consider the criminal justice system and the civil/family jurisdictions in parallel. The last round of consultative group engagement (November 2018) was a conference style discussion, including a series of stakeholder-led workshops, where facilitators and participants from across the justice system provided insights into how legal aid, and wider legal support can be improved for the end user through innovation, a greater use of technology and more accessible information and guidance.
94. Officials also held a roundtable with members of the senior judiciary to discuss the impact of LASPO from their perspectives. Alongside the consultative group meetings and judicial roundtable, officials met interested parties from across the justice system on an individual and small group basis to listen to a broad range of views. This included two roundtable meetings with interested parties in Wales to hear about matters that concern providers and individuals specific to them, as well as visits to Law Centres and advice providers.
95. Finally, the Ministry of Justice encouraged interested parties to submit relevant evidence to the dedicated review inbox. We received evidence from over 80 organisations/individuals and were directed to various other published reports and studies. Each piece of evidence has been carefully considered to inform this review.
96. Ultimately, the consultations that preceded LASPO were published over seven years ago, and since this time there have been significant developments in our justice system. This includes the processes through which people can access legal advice. We have seen changes in our courts and tribunals service, which are also apparent more generally in the rapid technological advancements seen across society over the past seven years. As such, the evidence gathering phase which in part considered these advances was also used to inform the Government's plans for the future of legal support in the justice system.

Data analysis

97. The impact assessments (IA) which accompanied the implementation of LASPO identified both monetised and non-monetised impacts of LASPO on individuals, groups and businesses in the UK.
98. Most of the data used in the PIR is captured by the LAA or HMCTS. The analytical assessment of the policies are comparisons to the relevant IAs published alongside the policy changes, most notably the change in legal aid expenditure and case volumes. However, this review also contains evidence submitted by external organisations, whether that be anecdotal, a key point raised during engagement with officials, or quantifiable evidence regarding the impact of LASPO. The source of the data is specified either where the data or evidence is used, or at the beginning of the chapter if the same source is used multiple times, except for the information held by the LAA about providers, which is described in the following paragraphs.
99. The examination of the impacts of the reforms on providers is based on the LAA published statistics on providers from 2012-13 to 2017-18 (the January to March statistics release).¹⁸ This data is collected by the LAA and therefore does not include any information on private legal work done by providers. This data is also summarised based on the date the cases were closed, which means that the figures for a given period may include the value of work conducted in earlier periods, and therefore there may not be a clear pre- and post-LASPO distinction in the data.
100. A provider may consist of a large firm with several offices around the country, or a single office location. This analysis has been completed at office level to allow for more granular analysis of how the work of providers has changed over time. However, it is worth noting that this does treat firms with multiple offices as separate entities and treats barristers as an individual provider, where they are paid directly.
101. The analysis is based on the total payments made to providers, including disbursements and VAT. Although we are aware that these figures will not be equivalent to providers' profits, earnings or take-home pay, using these figures reduces the number of assumptions needed about the data. All the figures are in nominal terms.
102. The analysis of provider contracts (the number of providers holding contracts, matter start allocations and contract cancellations) is based on a snapshot of all legal aid contracts as of 11 July 2018, as provided by the LAA.
103. This data cannot be directly compared with the LAA published statistics as the LAA statistics report on closed cases (attributing the case to the date the final main bill was authorised). Legal aid contracts cover cases that start in that given period. As all cases take different lengths of time, the case may not close in the same period as the initial contract was for, and as such it cannot be said that all those cases closing (finishing) within that period match up to the number of the contracts held at that time. It is also worth noting that not all contracts are for the same length of time and that providers can have multiple contracts within one financial year. These

¹⁸ With the exception of the analysis of contracts held by providers, which is described later in this section.

complexities can make concrete conclusions hard to formulate, however we can comment on general trends.

104. With regards to an assessment of the impact of LASPO on individuals with protected characteristics, we have assessed the data held internally, and data provided by stakeholders during the review. LAA client diversity data has been used to consider how those accessing legal aid has changed over time, however we recognise that there is a lack of data regarding the characteristics of those no longer accessing legal aid. The Legal Support Action Plan contains intentions to collect data to improve our evidence base and support future policy development.¹⁹

Rounding convention

105. The rounding convention used here follows that used for the original (LAR) IAs. Savings, and reduction in spend, estimates have been rounded to the nearest £½ million from £0m-£1m, nearest £1m from £1m-£10m, nearest £5m from £10m-£30m and nearest £10m for all figures in excess of £30m. Volume estimates have been rounded to the nearest 10 from 0-1,000, nearest 100 from 1,000-100,000 and nearest 5,000 for volume in excess of 100,000.
106. The IAs referenced here did not all use the same rounding convention, so where figures are quoted from an IA they may not match the rounding convention used for this document. In some cases, where noted, figures are rounded differently for clarity. Other figures (e.g. the average cost of specific activities) quoted are appropriately rounded.

Value for Money

107. The Post-Legislative Memorandum (PLM) considered the forth objective of LASPO to ‘deliver better overall value for money for the taxpayer’ by focusing on the way in which legal services are procured. This reflected the aim of targeting taxpayer-funded legal aid at the highest priority cases and underpinned the majority of the changes implemented by Part 1 LASPO (and subsequent amendments). It quoted the response to the 2010 Legal Aid Reform consultation which stated:

“Given the current fiscal deficit [the Government] considers that it is critical that it ensures that the amount that it pays for any service represents maximum value for money. In this context, the Government considers that it needs to ensure that it only pays those fees that are necessary to secure the level of services that are required.”

108. For this review we have adopted the National Audit Office (NAO) framework for considering value for money, and applied this to all of the policies considered in this review. The NAO framework utilises the following three criteria:
- i. **economy** (spending less): minimising the cost of resources;
 - ii. **efficiency** (spending well): the ability to spend resources to their maximum capacity; and,
 - iii. **effectiveness** (spending wisely): the degree to which actual results align with intended results.

¹⁹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

109. Another factor that may be considered in conjunction with the others is:
- iv. **equity** (spending fairly): the extent to which the policy raises fairness.
110. Utilising this NAO framework, it is usually possible to establish, to at least some extent, whether the policies in question have achieved economy and effectiveness as these link to LASPO's other objectives of discouraging unnecessary and adversarial litigation at public expense, targeting legal aid to those who need it most, and making significant savings to the cost of the scheme.
111. It should be noted that isolating the impact of LASPO against a multitude of other Government policies, and wider societal changes, is complex. It is often not possible to collect data on where costs arise elsewhere as a direct result of policy changes and quantify and attribute impacts robustly. This limits our ability to assess the efficiency and equity measures. It is therefore not always possible to draw firm conclusions regarding the extent to which LASPO has achieved better *overall* value for money for the taxpayer.
112. During the course of our engagement with stakeholders, we have discussed the value for money aspect of reform with a number of stakeholders. These discussions have greatly assisted our understanding of the success or otherwise of this objective. Where this is the case, we have highlighted this in the relevant sections.
113. The Government recognises that determining the extent to which LASPO changes represented overall value for money for the taxpayer is important, and to do this we must obtain a better understanding of this purported cost transference and wider efficiency and equity impacts to individuals and society. To inform our understanding of this, we will be continuing our work with stakeholders and colleagues across Government to improve our collected data on this issue.

Chapter 1 – Civil and family scope changes

1.1 Introduction

114. In this chapter we set out the impact of the changes made by LASPO to the scope of civil and family legal aid. Scope, in this context, means the type of legal problem or case for which legal aid is generally available. When a matter is in scope, civil and family legal aid provides for legal services. Depending on the matter, this may include:
- i. Legal help - initial advice and assistance to help with your problem
 - ii. Help at court - a solicitor or adviser to speak on your behalf (without formally representing you) at a court hearing
 - iii. Legal representation - a barrister or solicitor to represent you in court if you are taking or defending court proceedings
 - iv. Family mediation - mediation in family disputes, for example if you and your partner are separating or divorcing
 - v. Family help - help with negotiation and issuing legal orders in family disputes.
115. Prior to LASPO, the scope of legal aid was governed by the Access to Justice Act 1999.²⁰ A matter was within scope, unless it was specifically excluded by the Act.²¹
116. The civil and family scope changes were first consulted upon alongside the LAR package of reforms. The preferred approach was to list matters in scope, rather than identify those out of scope, a change from the Access to Justice Act 1999 approach. The civil and family matters retained in scope are listed in Schedule 1 of LASPO.²²
117. The Coalition Government sought to refocus the scope of the legal aid scheme on those who need it most. Moreover, the Coalition Government concluded *“that it is no longer affordable to provide legal aid for the extensive range of issues for which it is currently available. Nor does the [Coalition] Government believe that it is always appropriate to do so: in many matters, we would expect individuals to work to resolve their own problems, rather than resorting to litigation at a significant cost to the taxpayer.”*²³
118. Alongside the scope changes, Part 1 of LASPO introduced a revised ECF scheme.²⁴ The IA that accompanied LASPO at Royal Assent described the purpose of the ECF scheme as being to *“provide legal aid for cases that do not fall within the scope of civil and family legal aid but where the failure to do so would be a breach of*

²⁰ See: <http://www.legislation.gov.uk/ukpga/1999/22/contents>

²¹ Exceptions included personal injury and damage to property, conveyancing, boundary disputes, defamation or malicious falsehood, the making of wills, trust law and business cases.

²² See: <http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>

²³ See p31, paragraph 4.3:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf

²⁴ See: <http://www.legislation.gov.uk/ukpga/2012/10/section/10/enacted>

the individual's rights to legal aid under the Human Rights Act 1998 or European Union law, or where there is a significant wider public interest in funding legal representation for inquest cases."

119. LASPO made changes to the scope of both civil and family legal aid. These two areas will be considered in turn. This chapter aims to assess the extent to which the civil and family scope changes achieved their objectives, as set out at the time. Throughout this chapter legal help and legal representation are considered separately, due to their differing nature.

Methodology:

120. This chapter sets out our analysis of the changes to scope in family and civil legal aid, examining the actual impact against the anticipated impact set out in the relevant IA.²⁵

Adjustment in analysis for the pre-LASPO Decline

121. The analysis conducted for the IA used the number of civil and family cases closed in 2009-10 as a baseline. It anticipated that the same baseline would be used for the PIR. However, between 2009-10 and the implementation of LASPO in April 2013, there was a substantial decline in the overall volume of cases funded by legal aid.

122. As a result, the estimated policy impacts in the IA were calculated based on data representing a time when legal aid volumes were far higher than they were immediately prior to the reforms taking effect. Between 2009-10 (the IA baseline year) and 2012-13 (the year before the implementation of LASPO) there was a 39% decline in the number of legal help matter starts²⁶ and a 7% decline in the number of civil representation certificates granted.

123. Some potential factors which may have contributed to the decrease are:

- i. the introduction of new civil legal aid contracts in 2010, prior to which providers may have 'run down' work (i.e. closed cases and not opened new ones) if they were not intending to re-tender;
- ii. a programme of improved financial stewardship by the then LSC, who in 2010-11 began issuing more contract sanctions to providers and requiring more conclusive evidence of financial means from prospective legal aid clients;
- iii. the fall in calls to the Civil Legal Advice (CLA) telephone helpline, and the knock-on impact on face to face referrals;
- iv. reductions in funding to the not for profit legal advice sector, such as from local authorities; and
- v. behavioural responses in anticipation of LASPO – including the potential public perception that legal aid was already no longer readily available.

124. In an attempt to isolate the impact of the LASPO policies from the pre-LASPO decline in legal aid case volumes, and thus present a fair and accurate assessment of the impact of the LASPO policies, all analysis in this chapter has been conducted using legal help matter starts and civil representation applications granted against the 2012-13 baseline.²⁷

²⁵ See: <https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/Royal-Assent-IAs-and-EIAs.zip> - Annex A

²⁶ A 'Matter Start' means the authority to start a Controlled Work case for a Client – legal aid providers are contracted on the basis they can deliver a certain volume of matter starts;

²⁷ All dates are financial years, running from 1st April to the 31st March. This works for the LASPO policies, because the commencement was on the first day of the financial year (barring the minor transitional arrangements).

Estimation of volumes in this chapter

125. The case volumes set out in the analysis below are split into legal help, which includes all Controlled Work cases,²⁸ and civil representation, which includes all licenced work (certificates granted for legal representation²⁹).
126. Throughout this chapter both the volumes and spend are based on data aligning with the legal aid statistics: January to March 2018 publication.³⁰ This data set was used because it was the first publication with the most recent full financial year.
127. Volumes of legal help include face to face advice and advice via the CLA telephone specialist advice service. These are identified separately where relevant.
128. When comparing against the IA estimates, volumes are the observed difference between the starts in 2012-13 (the year before the scope reductions) and the most recent year available (2017-18). This enables an accurate view of the long-term impact of the policy changes. It should be noted that other external factors will have also had an impact on case volumes and where these have been identified we have stated them in this review.
129. When reporting the changes in case mix for legal help, closed case volumes³¹ are used because the sub-categories are not reported to the LAA until the matter is closed. This means that the case mix reported for legal help will lag behind the matter starts reported for the main part of the analysis. Legal help matters generally have a sufficiently short duration that this does not present a major concern for analytical purposes. For civil representation, the number of certificates granted is used on the same basis as the other volumes reported.
130. The client equalities data reported in this chapter considers the changes in the proportion of legal aid clients with protected characteristics before and after LASPO. In the case of legal help this aligns to closed cases, as with case mix reporting above, and includes face to face clients only, except in the section discussing the CLA telephone service where only legal aid clients on the specialist telephone advice service is reported. Civil representation equalities data are for granted applications. Within ethnicity, ethnic minority groups are all clients who identify other than white.

Estimation of legal aid expenditure

131. The total expenditure arising out of work started in any given year cannot be calculated until all cases starting in that year have closed on the legal aid system. Cases can go on for a number of years, particularly where civil representation is being provided and court proceedings are issued. This means that we are unable to calculate a cumulative actual spend arising from cases commenced (in each year) since LASPO because not all cases will have closed as at the date of this report. Because of this, in our analysis below we have estimated the likely overall spend

²⁸ Controlled Work is work under the civil contract that covers legal advice and assistance (Legal Help), help at court and legal representation in front of Mental Health Tribunals and the Immigration and Asylum Chamber of the Upper Tribunal.

²⁹ Representation by solicitors and advocates for civil cases which could go to court

³⁰ See: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>

³¹ The number of cases which have been concluded and closed on the LAA system

arising out of cases starting in a specified year based on previous costs³² for similar cases and multiplying it by the number of matters started in that year. All total costs include VAT.

132. The IA assessed all the policies introduced by LASPO cumulatively, and chose to model the effect of the scope changes first. However, the fee changes were implemented first, and there have been also subsequent changes to the scheme. The costs reported here are the actual estimated costs to the legal aid fund in the year prior to scope changes (2012-13) and the most recent full financial year (2017-18), and the estimated reduction in spend is the difference of these. To accurately compare to the original estimates in the IA, the best comparison by the percentage changes reported, as the financial amount will have been affected by fee changes being implemented first.

Categories of Law

133. The IA covering the civil and family scope changes considered the effect of the scope changes for each 'category of law' as defined in the civil legal aid contracts issued to providers by the LAA.³³ For these purposes a 'Category of Law' means one of the listed practice areas of civil law set out at Figure 3 below.
134. When collecting data, discrimination law was introduced as a new category. This was not an expansion of scope, but simply separating out existing categories for greater clarity. For example, equal pay matters would have previously been reported under the employment law category, but could now be reported under discrimination.
135. In some cases, providers elect (subject to the contracts they hold) which category to report their work in and as a result some cases could potentially fall into two (or more) categories of legally aided work. For example, in inquests and judicial reviews.³⁴
- i. Legal Help in relation to an inquest into the death of a member of the client's family (paragraph 41 of Schedule 1 of LASPO) will fall into the category which relates to the underlying subject matter of the inquest. For example, legal help for an inquest where the client died in prison will be funded in the Actions Against the Police category.³⁵ Where an inquest does not fall within one of the categories, it will be classed as miscellaneous work
 - ii. Public law challenges to the actions, omissions or decisions of public bodies (including under the Human Rights Act 1998), by way of judicial review (as described in paragraph 19 of Schedule 1 of LASPO) or habeas corpus (as described in paragraph 20 of Schedule 1 of LASPO) are covered by the

³² For legal help these unit costs are the average costs of matters closed in the relevant year. For civil representation the unit costs are based on actual spend, net of any received income from sources including client income and capital contributions as well as statutory charge payments, with the assumption that future spend will follow same cost profile of previous recent years.

³³ See: <https://www.gov.uk/government/publications/standard-civil-contract-2018>

³⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/406173/2014-category-definitions-2015-anti-social-behaviour-act-amendments.pdf

³⁵ In the 2018 contract tendering process, the category was renamed 'Claims against Public Authorities'

category in which the principal matter or proceedings appear, or by the category which relates to the underlying substance of the case (as referenced by the widest Category Definition incorporating excluded work). They are also covered by the Public Law Category.

136. The analysis in this chapter has compared what the IA expected the impact on each category to be with what actually happened in that category, as reported by practitioners. It should be acknowledged that there could be a degree of difference in how cases are categorised by different providers. This analysis assumes this difference in reporting will not skew the following trends.

Categories of law without a scope change

137. Mental health, asylum and community care³⁶ do not have specific analytical assessment in the rest of chapter, because the scope of these categories was not affected by LASPO. However, they are both included in the overall summaries in the previous section.
138. The volume of legal help has fallen in these categories; 13% in mental health and 63% in community care, despite the fact there was no scope change. This could be due to a number of factors, such as a potential lack of awareness of the availability of legal aid, the potential impact of clustering of problems (discussed in more detail below), or wider changes in society, such as changes to consumer rules. The fact that civil representation increased in these categories – potentially due to an increase in deprivation of liberty cases under the Mental Capacity Act 2005 – further suggests that there are multiple factors at play and it is difficult to isolate just one driver.

³⁶ Community care did have an estimate of 90 fewer cases in the IA, but LASPO did not itself change the scope of community care. The definition has changed since LASPO.

1.2 Civil Law Scope

139. This section sets out the impact of the changes made to the scope of the civil legal aid scheme as a result of LASPO. In summary, the scope changes concerned the following areas of law:
- i. Actions Against the Police/Claims Against Public Authorities
 - ii. Clinical Negligence Law
 - iii. Immigration Law
 - iv. Personal Injury Law
 - v. Education Law
 - vi. Social Welfare Law³⁷
 - vii. Consumer Law
 - viii. Public Law
 - ix. Miscellaneous
140. This chapter will also examine the changes introduced by LASPO to the CLA Gateway and the implementation and subsequent amendment of the ECF scheme.
141. The family law scope changes will be considered in section 1.3.

³⁷ Social Welfare Law is not a contract category, but has been grouped together for the purpose of this review. The rationale is explained at paragraph 364.

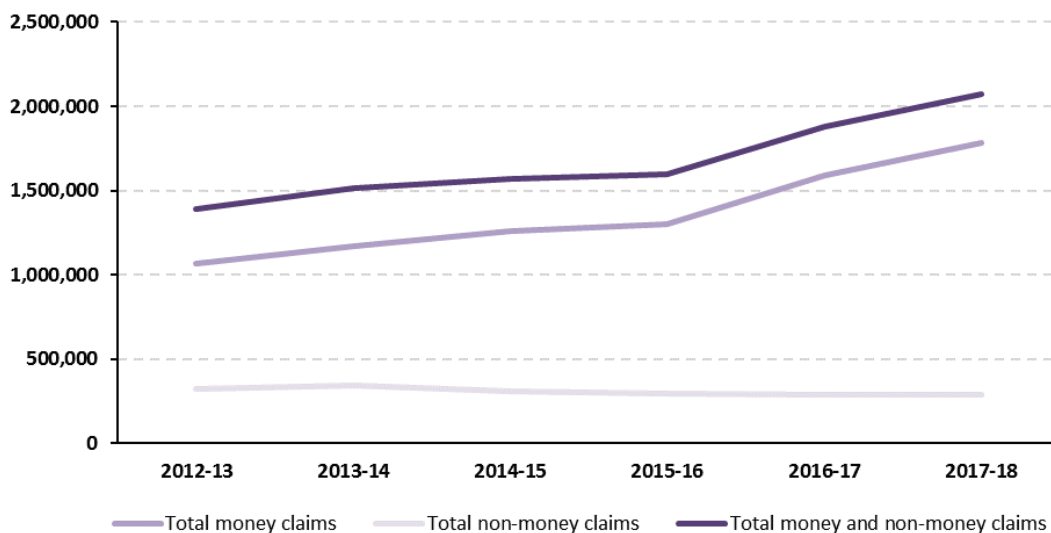
General trends and wider context

General civil court and tribunal volumes³⁸

142. To understand the impact of LASPO within the civil system, it is important to understand the changes in case volumes within the wider civil justice system. This is necessary in order to ascertain what case volume changes are LASPO driven and which changes are part of one or more wider trends.

143. Figure 1 illustrates civil claims³⁹ issued in county courts, by type, and how that has changed between 2012-13 and 2017-18. Total claims have risen steadily from around 1.4m in 2012-13 to around 2m in 2017-18 – an increase of 49%. As can be seen, the majority of the total claims relate to money claims and as such, the trend seen in the total claims is driven by the 67% increase in money claims. Non-money claims represent a significantly smaller share of total claims and have fallen by 11% compared to 2012-13.

Figure 1 – civil claims issued in county courts by type of claim (2012-13 to 2017-18)



144. Figure 2 explores money claims in further detail. Specified money claims⁴⁰ have increased by 84% since 2012-13. Other – unspecified money claims⁴¹ and personal injury claims have fallen 54% and 11%, compared to 2012-13.

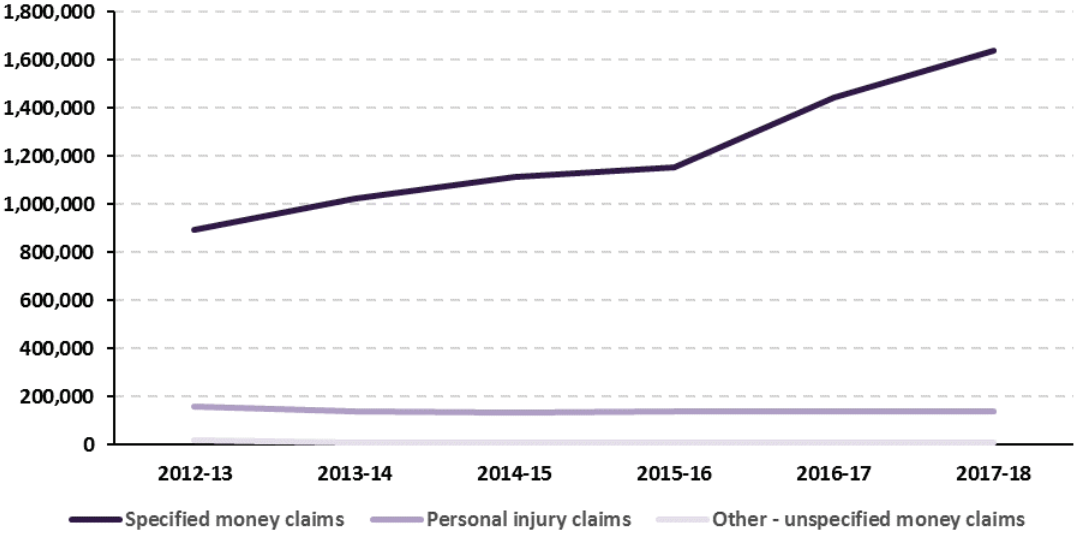
³⁸ For the civil statistics used in this section see: <https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-january-to-march-2018>

³⁹ Insolvency petitions and total completed civil proceedings in the magistrates' courts have been omitted from Figure 1.

⁴⁰ Money claims are those made by an individual, company or organisation for a specified amount of money.

⁴¹ Unspecified money claims are money claims that do not fall in the specified money and personal injury claims remit.

Figure 2 – civil money claims issued in county courts by type of claim (2012-13 to 2017-18)



145. Non-money claims are made up of largely mortgage and landlord possession claims. These have fallen by 30% since 2012-13. Over the same period, claims for return of goods and other non-money claims⁴² have increased by 75% and 22% respectively. The overall fall in the number of mortgage possession actions since 2008 coincides with lower interest rates, a proactive approach from lenders in managing consumers in financial difficulties and other interventions, such as the Mortgage Rescue Scheme and the introduction of the Mortgage Pre-Action Protocol. Additionally, the downward trend seen in recent years mirrors that seen in the proportion of owner-occupiers.

⁴² Other non-money claims include claims to evict trespassers, and for interim possession orders, landlord and tenancy applications (generally for a new tenancy agreement), injunctions (to make somebody do something or to stop them doing it), enforcement of Tribunal awards and of orders made in magistrates' courts, pre-issue applications (to obtain an order for disclosure of information prior to issue of a claim), and orders for costs only.

General civil legal aid trends:

146. There has been a decrease in both the volume of and spend on civil legal aid cases since the implementation of LASPO. LASPO has undoubtedly played a key part in this, but other factors (such as wider changes in society and the justice system in particular) are also involved.
147. Figure 3 shows the categories of law for which legal help is available, sorted by greatest actual percentage volume reduction. The actual volume and spend changes are also shown. As outlined at paragraphs 121-124, where a category of law saw a decline in volumes and spend immediately before LASPO, the actual change in volume and spend is not directly comparable to the IA estimate (which as set out above, was based on analysis of 2009-10 volumes).

Figure 3: Summary of the Legal Help changes in volume and spend, 2012-13 to 2017-18⁴³

Category	Volume Change			Spend Change		
	IA %	Actual %	Actual	IA %	Actual %	Actual
Consumer	-100%	-100%	-340	-100%	-100%	£0m
Personal injury	-91%	-100%	-320	-91%	-100%	£0m
Employment	-78%	-100%	-15,100	-76%	-100%	-£5m
Welfare benefits	-98%	-99%	-82,100	-97%	-99%	-£15m
Debt	-74%	-99%	-76,300	-75%	-100%	-£15m
Clinical negligence	-75%	-99%	-2,800	-75%	-100%	-£1m
Immigration-non-asylum	-92%	-85%	-20,100	-89%	-80%	-£9m
Miscellaneous	-85%	-79%	-260	-82%	-80%	£0m
Community care	-1%	-63%	-3,100	-1%	-36%	-£1m
Housing	-40%	-58%	-49,800	-38%	-48%	-£9m
Education	-58%	-36%	-1,100	-32%	+19%	+£0.5m
Actions against the police	-48%	-36%	-1,100	-44%	+31%	+£0.5m
Mental health	0%	-13%	-5,300	0%	-13%	-£5m
Immigration-asylum	0%	-9%	-3,500	0%	0%	£0m
Public law	-14%	0%	<+5	-16%	+26%	£0m
Discrimination		New	+1,700		New	+£0.5m

148. Figure 4 shows the categories of law for civil representation, sorted by greatest percentage volume reduction.

⁴³ Volumes taken from table 5.1 of the Legal Aid Statistics: January to March 2018 (<https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>)

Figure 4: Summary of the Civil Representation (full licensed representation) changes in volume and spend, 2012-13 to 2017-18⁴⁴

Category	Volume Change			Spend Change		
	IA %	Actual %	Actual	IA %	Actual %	Actual
Consumer	-99%	-100%	-120	-99%	-100%	-£0.5m
Employment	-95%	-100%	-60	-95%	-100%	£0m
Clinical negligence	-65%	-94%	-2,400	-64%	-93%	-£15m
Debt	-13%	-80%	-150	-13%	-85%	-£1m
Education	-29%	-78%	-110	-50%	-85%	-£0.5m
Immigration	N/A	-62%	-1,900	N/A	-64%	-£7m
Welfare benefits	0%	-40%	-10	0%	-50%	£0m
Public law	-1%	-39%	-710	-1%	-38%	-£3m
Housing	-11%	-36%	-4,400	-12%	-41%	-£10m
Actions against the police	-70%	-21%	-260	-59%	-26%	-£1m
Community care	0%	+75%	+630	0%	+138%	+£4m
Mental health	0%	+108%	+560	0%	+66%	+£7m
Miscellaneous	-60%	+130%	+350	-63%	+121%	+£1m
Discrimination		New	+10		New	£0m
Personal injury	-81%	+1000%	+10	-80%	+1000%	£0m

149. Some of the percentage changes in Figures 3 and 4 are affected by other changes, such as reclassification of the data collection. For instance, miscellaneous (which has seen a 130% increase), now includes the small number of personal injury cases that remained in scope of legal aid, as well as employment and damages claims for victims of trafficking and modern slavery. These trends will be discussed in turn in this chapter. Figure 5 shows the total estimated spend for the baseline year (2012-13) and the most recent year available (2017-18), along with the reduction in spend.

Figure 5: Summary of spend for all civil (non-family) spend

Level of Service	Baseline 2012-13	Current 2017-18	Change in Spend	% change
Legal Help	£140m	£80m	-£60m	-41%
Civil Representation	£80m	£50m	-£30m	-35%

150. Figure 5 shows that the monetary and percentage reductions in all civil (non-family) cases are in line with the IA estimates. The IA estimated that there would be a decline in spend of £80m (41%) on civil legal help and £25m (37%) decline in spend on civil representation.

151. The reduction in spend on legal help fell short of the anticipated saving (£60m versus the £80m expected) due to a number of reasons. The IA estimated the £80m saving based on an anticipated case volume and average case cost. The general decline in case volumes which occurred immediately before the implementation of LASPO means that we cannot attribute the full decline in case volumes to the LASPO scope changes in those first two years post implementation. We have also

⁴⁴ Volumes taken from table 6.1 of the Legal Aid Statistics: January to March 2018 (<https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2018>)

seen an increase in average case costs in some categories of law leading to a greater than anticipated spend overall. For civil representation, three 'categories' increased spend (miscellaneous, mental health and community care) so the overall percentage drop in spend does not reflect the wider fluctuations between areas of law, such as housing and clinical negligence.

General themes in civil law scope as outlined by stakeholders during LASPO PIR engagement activities:

152. As discussed in the introduction, the Ministry of Justice undertook extensive engagement with a wide range of interested parties on the utilisation of legal aid and the court system since the implementation of LASPO. During this engagement, certain key themes emerged. These are summarised immediately below, and separately for each category of law later in this chapter.
153. The Ministry of Justice takes seriously concerns raised during the evidence gathering process. It wants to explore these issues further so that individuals can access the most efficient support, and whether innovative methods of delivering legal services can help reach those located in areas where it is more difficult to access face to face advice. These issues and others raised via our stakeholder engagement are considered further below, alongside the Government's response to them, and in the Action Plan.⁴⁵

Early intervention is paramount

154. Many stakeholders felt that early intervention is key in supporting people resolving their problems and reducing the overall cost to the public purse.
155. There was a general view amongst stakeholders that LASPO has removed the principle of early intervention, leaving people to either not resolve their issues, or to embark on lengthy and costly court action due to not being aware of other potential routes of resolution. Expanding on this issue, stakeholders remarked that early – quality – legal advice accrued wider savings to the public purse, though interested parties acknowledged that further data would be required to make this case statistically.
156. One idea proposed was a redistribution of legal aid funds to re-introduce lawyers providing legal services/help at an early stage, allowing advice sectors to undertake a more pastoral role to stop problems escalating and developing. However, there was a concern that LASPO has resulted in losses of expertise from the sector that could not be quickly refilled.
157. The response throughout the evidence gathering phase was overwhelming that intervening early is more effective for all parties. Although there have been efforts to try, more evidence is required to quantify the most effective means of providing early intervention. As such, more needs to be done to develop the case for investment in early intervention, including how it is best delivered. This is considered further in the Legal Support Action Plan.⁴⁶

Clustering

158. During engagement, the prevalence of problem 'clustering' was frequently raised. Clustering refers to when those with a legal problem are unlikely to have just one matter of concern. For example, someone with a debt problem may also have a welfare benefit issue or a problem with their landlord which could escalate to become further legal problems (if it has not already).

⁴⁵ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

⁴⁶ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

159. It was said that a hard line between what is in and out of scope leaves people with a solution to some of their cluster of problems, but not all of them. Stakeholders suggested Government should consider embedding legal advice in other services; 'place based legal services', noting that 'one stop shops' can be very effective, user friendly, and would support those with clustered problems. The Low Commission research was noted which articulated 'Advice on Prescription', the idea of GPs prescribing advice as well as medicine.
160. Whilst there are some examples of innovative methods of tackling problem clusters, more research is required to develop the case for the most effective solution. As such, the Government wants to assess and collect more evidence about the value of the co-location of support services for the benefit of the individual. This is considered further in the Action Plan.⁴⁷

Self-representation

161. On self-representation, many stakeholders were of the view that, while efforts to simplify and streamline court processes were commendable, the system was not yet sufficiently capable of catering for those without legal representation. Even in a simplified system, equality of arms was reiterated as a fundamental principle. Stakeholders were sceptical of the ability to achieve the cultural change required to overcome the 'I want my day in court' mentality. However, some stakeholders were of the view that a shift in emphasis to a problem-solving approach, rather than informing people about points of law, might be more beneficial to the end user whose legal issue may no longer be in scope of legal aid funding.
162. Many stakeholders noted that not having a trained professional to guide users through courts processes and procedures oftentimes exasperated stress and anxiety levels in a user group which already contains a high number of vulnerable people. Many stakeholders were of the view that online advice alone was not a suitable alternative to legally aided help or representation, and that a variety of other options must be available to cater to the wide variety of people and problems.
163. Some stakeholders also felt that the increase in people self-representing was changing the way the justice system operates, with particular concerns surrounding judges providing advice from the bench which could, if not handled sensitively, undermine their impartiality. It was felt that this also causes delays and increases the costs to the public purse.
164. The Government appreciates that litigants in person require more support, to help individuals navigate through the justice system. However, it is not accepted that the justice system cannot function with the increased presence of litigants in person, and access to a lawyer is not always the correct or most affordable answer. This is considered further in the Action Plan.

Advice deserts

165. It was asserted that many solicitors had abandoned legal aid work leading to advice deserts for certain categories of law. It was felt this could most acutely be observed with immigration and housing issues. It was noted that advice deserts are more

⁴⁷ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

likely to occur in rural areas with people no longer seeking advice because they either do not know where to go, or it is too far to travel.

166. The LAA regularly monitors capacity and the available access to services and takes action where it identifies gaps in services or where demand is greater than the available supply. Where the LAA is unable to secure face to face provision based in an affected area, its contract has sufficient flexibility for providers to offer alternative ways to deliver advice, for example, by offering outreach services in conjunction with the delivery of advice through digital methods. The effective delivery of harder to reach areas may be assisted by digital solutions. This issue is considered further in the Action Plan.⁴⁸

Qualified One-Way Costs Shifting (QOCS)

167. Alongside this review of Part One of LASPO, the Government is also publishing a review of Part Two: civil litigation funding and costs. Please refer to that document for further themes raised by stakeholders on the impact of the legislation.
168. During the evidence gathering phase of that review, several stakeholders suggested extending Qualified One-Way Costs Shifting (QOCS),⁴⁹ a form of costs protection which is currently available for Personal Injury cases only, to a wider range of cases including professional negligence, actions against the police, housing disrepair, discrimination, private nuisance and judicial reviews to improve access to justice. Defendants argued that an extension of QOCS was not necessary or desirable and risked an increase in unmeritorious claims.
169. The impact of Part Two of LASPO, including the usage of QOCS, is considered here: <https://www.gov.uk/government/publications/post-implementation-review-of-part-2-of-laspo>.⁵⁰

⁴⁸ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

⁴⁹ QOCS is a form of costs protection which means that normally an unsuccessful claimant does not have pay a defendant's costs

⁵⁰ See: <https://www.gov.uk/government/publications/post-implementation-review-of-part-2-of-laspo>

General themes regarding equalities following LASPO:

170. During our stakeholder engagement we also heard from stakeholders about the impact of LASPO on the equalities impacts of the changes vulnerable people and those with protected characteristics. The key themes are summarised and outlined below for those characteristics on which we received evidence via our engagement and is presented alongside the LAA diversity data where it is available.

Summary of LAA client diversity data for civil legal aid

171. The following paragraphs describe the change in the proportions of the protected characteristics of legal help and civil representation clients in civil categories. Combining these categories together can mask differences between the categories, so more detail is given as each category is discussed in turn throughout the chapter.

Legal Help

172. Overall the diversity data for legal help clients in the civil categories shows few substantial changes in the proportion of clients with different characteristics. In terms of age, the proportion of clients in the oldest and youngest age bands shows a slight increase, with those under 24 making up 11% of clients in 2012-13 rising to 15% in 2017-18 and those over 65 rising from 4% to 7% over the same period. This has led to a similar slight reduction in the ages in between.

173. The proportion of clients reporting a disability was increasing before LASPO, and continued that trend, going from 50% reporting a disability in 2012-13 to 58% in 2017-18. However, reporting in this area is not complete with the proportion of clients without reported data also rising from 11% to 14% over the same period. When discussing the diversity data of the individual categories below, sometimes the proportion we do not know about can prevent definite conclusions within this group.

174. Ethnicity reporting also has a proportion without reported data, which has been increasing, which makes definite conclusions hard. However, in 2012-13, 71% of clients were white, 18% were from ethnic minority groups and 11% were not reported. In 2017-18, 59% of clients were white, 21% were from ethnic minority groups, and 20% were not reported.

175. In terms of gender, in 2012-13 52% of clients were female and 48% were male. This switched post-LASPO and has been steady since, with 46% of clients being female and 53% of clients being male in 2017-18.

Civil Representation

176. Overall the diversity data for civil representation clients in the civil categories shows similar changes to legal help. In terms of age, the proportion of clients in the oldest category, over 65s, has increased from 5% in 2012-13 to 11% in 2017-18, while the remaining age bands have slightly reduced or remained similar.

177. For disability, there have been an increasing proportion of clients reporting a disability. In 2012-13, 33% of clients reported a disability, while 26% were not reported, and in 2017-18, 45% of clients reported a disability, with 14% not reported.

178. It is difficult to make firm conclusions regarding ethnicity of clients, as reporting in civil representation has a large proportion of clients not reported. However, in 2012-

13, 45% of clients were white, 28% were from ethnic minority groups and 27% were not reported. In 2017-18, 48% of clients were white, 29% were from ethnic minority groups and 23% were not reported.

179. In terms of gender, in 2012-13, 52% of clients were male and 47% were female. This has changed slowly post-LASPO, with a general slight trend toward a higher proportion of female clients. In 2017-18, 48% of clients were male and 52% were female.

Overarching themes from external evidence

180. The Equality and Human Rights Commission (EHRC) report⁵¹ notes that individuals can struggle to represent themselves effectively, or provide the evidence that courts need to reach a fair decision. This is particularly true for people with from certain groups, such as those with mental health conditions, learning disabilities, or those who face language barriers. Furthermore, adults with learning disabilities, language barriers and/or mental health issues will struggle to engage with the legal system without specialist support.
181. Amnesty International's 2016 report noted a disproportionate impact on disadvantaged groups. This includes vulnerable young people, migrants and refugees, and people with 'additional vulnerabilities' (such as those with mental health conditions, learning disabilities, low numeracy and literacy levels, language problems, medical conditions such as terminal illness, and alcohol and drug dependency).⁵²
182. The Personal Support Unit (PSU) provide a free service for people facing civil and family proceedings without legal representation. They collect some statistics on the clients they support. They report that, at the Royal Courts of Justice, 73% of clients were from an ethnic minority background, compared to 80% at the Central Family Court and 14% at the Liverpool Civil and Family Court. In terms of clients with a disability, they report 14% at the Royal Courts of Justice, 8% at the Central Family Court and 11% at the Liverpool Civil and Family Court.
183. The Law Centres Network have asserted that LASPO is adversely and disproportionately affecting disadvantaged groups, and groups with protected characteristics with the direct and indirect effects of this not being sufficiently understood. Similarly, Shelter have outlined the frustration their clients have about why one person cannot resolve all their related issues. They assist many vulnerable clients who find it hard to manage paperwork and appointments, because of language barriers, disabilities and mental health issues, for example.

Age

184. As outlined in the EHRC's report, several stakeholders, including Amnesty International, outlined their view that LASPO has had a disproportionate impact on children, with the Bach Commission calling for a restoration of legal aid for all cases

⁵¹ Equality and Human Rights Commission. 2018. *The impact of LASPO on routes to Justice*. See: <https://www.equalityhumanrights.com/en/publication-download/impact-laspo-routes-justice>

⁵² Amnesty International. 2016. *Cuts that hurt*. See: <https://www.amnesty.org/download/Documents/EUR4549362016ENGLISH.PDF>

involving children.⁵³ Furthermore, the Office of the Children’s Commissioner has published research that includes detail on children attempting to find free legal advice, represent themselves as litigants in person, or not try to solve their legal problems.⁵⁴

Disability

185. Disability Alliance raised concerns that charities, such as theirs, are not fully equipped to help people to the full extent that the legal aid scheme did prior to LASPO. Mencap raised the issue of low legal capability amongst the families of people with a learning disability. They added that awareness of social care and social welfare rights and how to enforce them is also generally low.
186. The EHRC report notes that the high demand for advice for disability benefits means that the scope changes have had a disproportionate impact on disabled people or those with a long-term health condition, who relied upon legal aid to support appeals.
187. Stakeholder’s raised concerns on other vulnerable groups, such as those with mental health illnesses. The EHRC noted the high incidence of mental health conditions among people involved in private family law proceedings, which created a risk that parents would lose contact with their children because they were unable to present their cases effectively without legal representation.
188. MIND have commissioned research into the relationship between mental health, legal problems, and access to legal aid. Their research suggests that people with mental health problems may struggle to access the legal system, and that the types of legal problem covered by legal aid (the scope), and to the financial eligibility threshold for applicants, have disproportionately impacted people with mental health problems. MIND note that people with mental health issues are more likely to receive disability benefits, fall into debt, and to live in the poorest quality homes. MIND have also suggested that, 50% of those whose legal problem are now out of scope have mental health problems.⁵⁵

*Race*⁵⁶

189. The Low Commission stated, “*we have repeatedly heard concerns that there are likely to be particular impacts on black and minority ethnic communities as a result of the loss of immigration advice from legal aid.*”⁵⁷

⁵³ Equality and Human Rights Commission (see reference 51)

⁵⁴ Just for Kids Law. 2014. *Research for the Office of the Children’s Commissioner*. See: <https://justforkidslaw.org/news/just-for-kids-law-research-conducted-for-childrens-commissioner-highlights-impact-of-legal-aid-cuts-on-vulnerable-young-people/>

⁵⁵ MIND. 2018. *An unjust system?* See: <https://www.mind.org.uk/media/23652220/an-unjust-system-mind-may-2018.pdf>

⁵⁶ Including colour, nationality, ethnic or national origin

⁵⁷ Low Commission. 2014. *Tackling the advice deficit*; p15. See: <https://www.lag.org.uk/about-us/policy/the-low-commission-200551>

190. Unite asserted that, “[the legal aid reforms] have hit minority ethnic communities disproportionately, and there are no alternative sources of funding to assist these groups.”⁵⁸

Gender

191. The Low Commission stated, “some of the other changes, such as those affecting family law, could mean that women with housing and welfare benefit problems arising from relationship breakdown, will find that all their needs for legal advice are outside the scope of legal aid because of the reduction in the scope of housing cases.”⁵⁹
192. The EHRC’s report noted that in many family law cases, one party is compelled to pursue litigation by the other party initiating action. EHRC offered that men pursue applications for contact more frequently than women, and mothers are unwilling litigants in such cases. Such unwilling unrepresented litigants are less likely to understand the case and to be able to articulate their position, and more likely to lack confidence.⁶⁰
193. Several groups, including the Southall Black Sisters and Rights for Women have noted that, in their view, LASPO has had a particular impact on BAME women. More analysis of the impact of the private family law scope changes have been later on in this chapter.

Summary

194. The Government acknowledge the evidence submitted above, albeit the majority of evidence submitted was anecdotal. As we move forward with the Legal Support Action Plan⁶¹ we have committed to working closely with the Government Equalities Office, as well as continuing to engage regularly and extensively with stakeholders such as the EHRC.

⁵⁸ Unite the Union. 2018. *Evidence submission to this review*. p3.

⁵⁹ Low Commission (see reference 57).

⁶⁰ Equality and Human Rights Commission (see reference 51)

⁶¹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

Impact of LASPO on the various categories of law

Actions Against the Police/Claims Against Public Authorities

Policy Summary

195. This is a broad category which includes actions against the police and claims against public authorities (where the authority has power to prosecute, detain or imprison) – excluding judicial review cases. Prior to LASPO legal aid was available in cases where there was evidence of:
- i. serious wrong-doing;
 - ii. abuse of position of power; or
 - iii. significant breach of human rights;⁶²
196. Additionally, legal aid was available for a wide range of cases that would otherwise have been excluded, for example if there is a significant wider public interest (and where the claim formed part of a Multi-Party Action where the likely damages exceed £5,000).
197. LASPO removed cases that involved ‘serious wrong-doing’ and ‘significant wider public interest’ from the class of cases automatically with the scope of legal aid, as it was argued that they led to large numbers of less serious claims being within scope of legal aid.
198. Two specific areas, within the broad categories set out at paragraph 195, where legal aid would be available post LASPO were:
- i. Legal advice and representation for claims (typically for damages) against public authorities arising from allegations of abuse of a child or vulnerable adult, or arising from allegations of sexual assault; and,
 - ii. Legal help at inquests.⁶³
199. Civil representation at inquests was only available prior to LASPO where the prescribed criteria in the authorisation and guidance of the Lord Chancellor were met.⁶⁴ Following LASPO, the test for ECF for advocacy at inquests did not

⁶² The criteria stated in paragraph 186 referred to in the funding code, created by the LSC under s.8 Access to Justice Act, in defining section 8 of the funding code. Note, however, that funding code definitions, whilst similar in some cases, were generally not co-extensive with contract categories of law. That had implications in that, under a general authorisation of the Lord Chancellor under section 6(8), the case would be in scope even if it prima facie fell into an AJA exclusion such as for personal injury; it also meant that more generous criteria were applied (no need to consider a CFA and the cost benefit test was one of proportionality rather than a strict damages to costs ratio).

⁶³ See the civil scope overview section (pages 26-27) for more detail on why inquests can appear in multiple categories. Although in the IA these cases were presented under the miscellaneous category, they mainly appear under this category in the data that the LAA collects (although a very small number appear under miscellaneous).

⁶⁴ Under the Access to Justice Act there was specific guidance from the Lord Chancellor as to the circumstances in which s/he would expect the LSC to recommend him/her to fund an inquest under s.6(8)(b) of the Act.

fundamentally change. Funding for representation was made available through the ECF scheme, if the application satisfies one of the two following criteria:

- i. there is wider public interest in the applicant being funded, and/or
- ii. there is an arguable breach of Article 2 of the ECHR (right to life). Means and merits testing is subject to a discretionary waiver.

200. There is not a separate category for inquests, and providers generally place inquests into the category that covers the underlying issue in the case. Claims against public authorities (which includes actions against the police) is a common category. Other categories that are likely to include inquests include clinical negligence, community care and mental health. Inquests that do not fall in a category are collected in miscellaneous.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

201. Whilst the total expenditure for these case types is relatively small, this policy change has contributed to the delivery of significant savings to the cost of the legal aid scheme, albeit not to the extent anticipated in the IA. Expenditure on legal help has increased over the period, while civil representation spend has decreased, although by a lower amount than expected. The reasons for this are explored in more detail below.
202. The IA anticipated that following the fall in volumes, expenditure would reduce by 44% for legal help and 59% for civil representation. This information and the corresponding estimated decline in volumes is outlined in Figure 6.

Figure 6: Actions Against the Police changes in the IA

Level of Service	Change in case volumes	Proportion of cases	Change in Spend	Proportion of spend
Legal Help	-1,900	48%	−£0.5m	44%
Civil Representation	-320	70%	−£1m	59%

203. Figure 7 shows a summary comparison of the estimates in the IA and the actual change between the new baseline year of 2012-13 and 2017-18.

Figure 7: Comparison of Actions Against the Police IA Estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Change			Spend Change		
	IA %	Actual %	Actual change	IA %	Actual %	Actual change
Legal Help	-48%	-36%	-1,100	-44%	+31%	+£0.5m
Civil Representation	-70%	-21%	-260	-59%	-26%	−£1m

204. Contrary to expectations, estimated legal help spend on actions against the police rose by 31% between 2012-13 and 2017-18. This is primarily due to the rise in claims for legal help at inquests. The number of legal help matter starts for inquests (including inquests that do not involve the police) has risen from 60 in 2012-13 to 140 in 2017-18 (Figure 8). While this remains a small number of cases and still only makes up 10% of the legal help case mix for this category, on average inquest cases are over five times more expensive than the mean cost of actions against the police category as a whole. Therefore, the increase in inquest cases is the primary factor in the increase in legal help spend since the introduction of LASPO. The Ministry of Justice have undertaken a separate review of legal aid for inquests, which can be found here: <https://www.gov.uk/government/publications/review-of-inquests>.

Figure 8: Legal help case-mix in 2012-13 and 2017-18 for Actions Against the Police

Matter type	Volumes			Case-mix	
	2012-13	2017-18	Change	2012-13	2017-18
Complaint	740	290	-61%	29%	21%
False imprisonment/wrongful arrest	590	300	-50%	24%	21%
Assault	410	230	-44%	16%	16%
Other	130	80	-40%	5%	6%
Human Rights Act only	70	160	+136%	3%	12%
Inquest (death in custody)	40	80	+98%	2%	6%
Inquest (other)⁶⁵	20	60	+205%	1%	4%
Other small categories	540	270	-50%	21%	19%

205. Spend on civil representation has declined by 26%. This is less than the 59% which was anticipated by the IA. The less than anticipated decline in volumes (21% rather than 70%) is the primary reason for this. Spend has reduced from £3m in 2012-13 to £2m in 2017-18.

206. The case mix for civil representation has experienced the same general trends as legal help, with inquests and Human Rights Act cases being the only major categories to increase in volumes, although judicial reviews have increased to 20 in 2017-18. For data collection purposes, inquests are a new proceeding code for civil representation since LASPO, increasing to 120 grants in 2017-18.

Figure 9: Civil representation case-mix in 2012-13 and 2017-18 for Actions Against the Police

Proceeding type	Volumes			Case-mix	
	2012-13	2017-18	Change	2012-13	2017-18
Negligence	350	50	-86%	28%	5%
Child abuse	250	180	-31%	20%	17%
False imprisonment	240	130	-46%	19%	13%
Trespass/assault	140	80	-41%	11%	8%
Wrongful arrest	110	30	-75%	8%	3%
Human Rights Act	100	320	+230%	8%	32%
Inquest	0	120	New	0%	12%
Other small categories	90	110	22%	7%	11%

207. Figure 10 shows a summary of legal aid expenditure for actions against the police. For this category of law, the anticipated savings have not been fully realised.

⁶⁵ This matter type has been included, despite being below the 5% inclusion threshold, because of its similarity to the Inquest (death in custody) matter type

Figure 10: Summary of spend change for actions against the police

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£2m	£2m	+31%
Civil Representation	£3m	£2m	-26%

Discouraging unnecessary and adversarial litigation at public expense

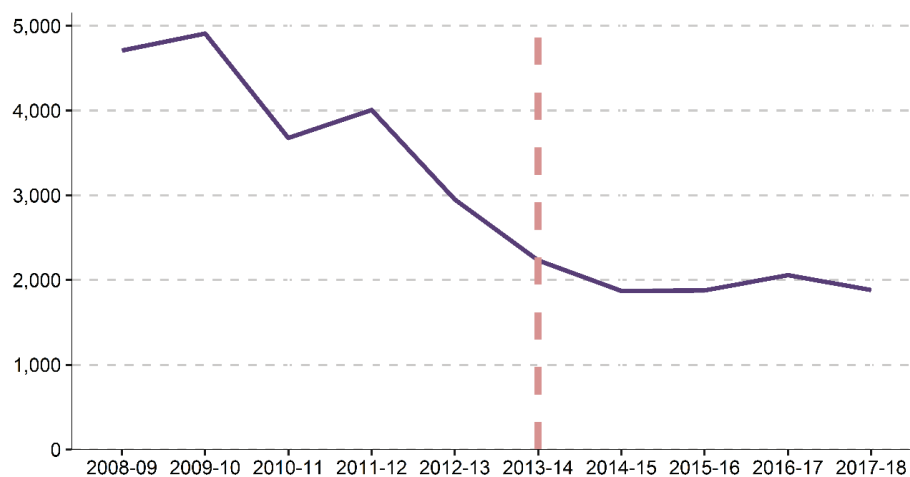
208. The purpose of this reform was not to discourage unnecessary and adversarial litigation at public expense but instead ensure legal aid was available in the highest priority cases (see next objective).

Targeting legal aid at those who need it most

209. As touched upon previously, the volumes have not fallen as significantly as expected for this category of law. The IA anticipated that legal help volumes in this category would reduce by 48% and for civil representation, the volumes would reduce by 70%.

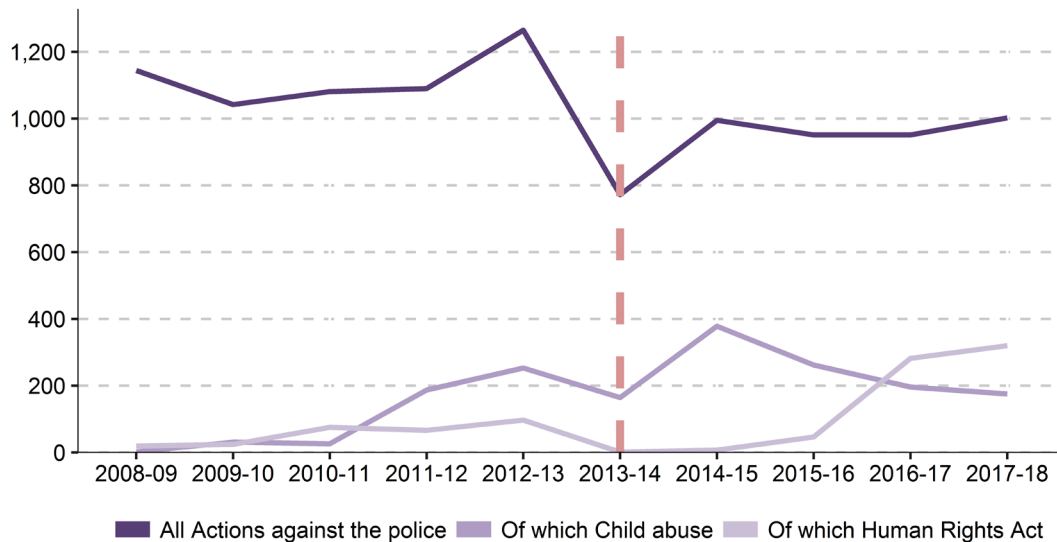
210. Legal help volumes fell by 36% between 2012-13 and 2017-18, which is less than the 48% estimated in the IA. Volumes were already generally declining before LASPO, and LASPO's implementation did not lead to the large immediate drop seen in other categories (Figure 11). The volume of matter starts has been broadly stable since 2014/15.

Figure 11: Actions Against the Police Volumes (legal help matter starts) 2008-09 to 2017-18



211. Civil representation volumes fell by 21% between 2012-13 and 2017-18. This decline is less than the 70% fall which was anticipated in the IA. Civil representation volumes have been generally stable from 2014-15 onwards.

Figure 12: Actions Against the Police Volumes (civil representation granted certificates) 2008-09 to 2017-18



Client equalities

212. Utilising LAA client diversity data, several trends can be observed for legal help. The distribution of the age of clients within this category of law has remained broadly the same, with around a quarter of clients in each of the age bands from 25 to 34 and 35 to 44. There has been a declining trend in the proportion of male clients, starting from before LASPO, falling from 73% in 2012-13 to 67% in 2017-18. It is harder to determine a trend in ethnicity because around a third of clients over the period do not have ethnicity data reported, but the proportion of white clients has fallen slightly, while the proportion of clients from a minority ethnic background has increased slightly from 46% to 54%. It is also hard to draw firm conclusions about access for clients with a disability because of around a third of clients do not have data reported, but the proportion of clients reporting a disability has increased from 19% in 2012-13 to 26% in 2017-18.

213. For civil representation, the age of clients has seen a slight rise in clients under the age of 18, from 17% in 2012-13 to 23% in 2017-18, and a slight rise in clients over 55, from 8% to 15% in the same period. This has reduced the proportion of clients with ages in between. The gender distribution has continued its pre-LASPO trend towards a more even split, with the proportion of female clients rising from 28% in 2012-13 to 47% in 2017-18. For the ethnicity of clients, as with legal help, around a third of clients do not have data reported, but has remained broadly similar with around half of clients white, and one fifth from a minority ethnic background. The proportion of clients declaring a disability was 25% in 2012-13 and 21% in 2013-14, however the proportion without recorded data decreased from 43% to 31% over the same period, so it is difficult to draw firm conclusions from this.

Delivering better overall value for money for the taxpayer

214. As outlined above, this scope change did not achieve the savings anticipated in the IA due to the rise in claims for inquests. Nevertheless, civil representation spend in this area has fallen by £1m, as estimated initially, and when disregarding inquests

(which represented a broadening of scope) the spend on legal help has fallen. As such, this policy has achieved some economy.

215. This policy has not achieved the reductions that were anticipated in the IA, limiting its overall effectiveness as regards value for money.
216. For the same reasons as outlined in the introduction (paragraphs 107-113), it has been difficult to identify the efficiency and equity outcomes of the change. The LAA client diversity data has been considered, although it is unclear regarding the cohort of people who are no longer accessing legal aid.
217. Legal aid for inquests, which has significant overlaps with this category of law, has been considered in a separate review, which you can find here: <https://www.gov.uk/government/publications/review-of-inquests>.

Clinical Negligence

Policy Summary

218. Prior to LASPO, legal aid was available for both legal help and legal representation in cases where litigants were seeking damages against public or private medical practitioners after having potentially suffered negligent treatment. Claims of this type are for monetary compensation.
219. The Coalition Government considered that litigants should fund their case through means other than legal aid where they are able to do so. It was the Coalition Government's view that most clinical negligence claims could be funded through alternative funding arrangements such as CFAs. It was conceded that in a small number of cases lawyers would be unwilling to use CFAs, however these cases were not seen to represent a high enough proportion of cases to justify retaining clinical negligence cases remaining generally within scope, given the ECF scheme was also a potential avenue to funding for these cases.
220. As such, LASPO removed a high proportion of clinical negligence proceedings from the scope of legal aid. However, legal aid was retained for clinical negligence claims where a child has suffered a neurological injury causing severe disablement because of negligent treatment between the onset of pregnancy and eight weeks after birth.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

221. LASPO has achieved the objective of making significant savings to the cost of the scheme in this area. Following a post-LASPO reduction in volumes, legal aid expenditure on clinical negligence cases fell substantially. Between 2012-13 and 2017-18, estimated legal help spend reduced by more than 99%, while civil representation spends fell by 93%, from £20m to £1m (Figure 13).

Figure 13: Summary legal aid spend on Clinical Negligence

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£1m	<£0.25m	-100%
Civil Representation	£20m	£1m	-93%

Discouraging unnecessary and adversarial litigation at public expense

222. Whilst the reform of legal aid scope for clinical negligence was not designed to contribute to the objective of reducing unnecessary and adversarial litigation, during the evidence gathering phase it was argued that in fact LASPO (both Parts 1 and 2) had increased litigation against the National Health Service (NHS).

223. The picture is complex and a number of factors are at play here. This includes an increased encouragement of personal injury claims generally, the certainty of payment of fees under legal aid, attractive returns to lawyers on pre-LASPO CFAs, the reform of both CFAs and legal aid in LASPO (with the consequence that non-legal aid lawyers entered the clinical negligence market), the extension of fixed recoverable costs to non-clinical negligence personal injury claims, and the proposed fixed recoverable costs in clinical negligence costs in claims under £25,000.

224. NHS Resolution (NHSR) data shows that the number of new clinical claims increased from 10,129 in 2012/13 to a peak of 11,945 in 2013/14 before declining steadily to 10,673 in 2017/18.⁶⁶ The NAO report into the costs of clinical negligence noted that LASPO “led to a spike in the number of claims received immediately prior to the Act coming into effect in April 2013. The Act [Part 2 of LASPO] aimed to curb the disproportionate rise in legal costs resulting from excessive growth in the use of ‘no-win-no-fee’ agreements. It also introduced restrictions on the reimbursement of the cost of insurance taken out to protect against unsuccessful claims. Since the introduction of the act, the number of new claims has reduced slightly over the last three years.” The success of Part 2 of LASPO has been considered in a separate review, which can be found <https://www.gov.uk/government/publications/post-implementation-review-of-part-2-of-laspo>.

⁶⁶ NHS Resolution. 2018. *Annual Report and Accounts 2017/18*. See p16: <https://resolution.nhs.uk/wp-content/uploads/2018/08/NHS-Resolution-Annual-Report-2017-2018.pdf>

225. Between 2012-13 and 2017-18, the number of cases against NHS Trusts (handled by NHR) which were resolved without payment of damages rose by 40.4%.⁶⁷
226. Between those years the proportion of cases resolved without payment of damages rose slightly (from 40% to around 43%), meaning that within the overall volume rise a slightly higher proportion could be viewed to have been unmeritorious.
227. Whilst the evidence (outlined in more detail below) seems to suggest that LASPO has led to a shift from legal aid funding to CFAs, more research would be required to ascertain the extent to which removal of legal aid funding, alongside other factors, may have caused additional, unmeritorious claims to be brought.

Targeting legal aid at those who need it most

228. This objective has been met in this area. The Coalition Government was of the view that clinical negligence was not a sufficient priority for legal aid funding, largely because of the widespread availability of alternative funding arrangements such as CFAs. The volume of non-legal aid funded clinical negligence cases has increased and those seeking to bring a claim have sought alternative funding arrangements, focusing legal aid on only those cases the Coalition Government felt were most in need.
229. There have been fewer cases funded by legal aid than was initially anticipated for those clinical negligence cases that remained in scope (clinical negligence claims where a child has suffered a neurological injury causing severe disablement because of negligent treatment between the onset of pregnancy and eight weeks after birth). However, there is evidence that the total number of claims for these matters have remained steady. Whilst we cannot be sure, this does not indicate an issue of unmet need.
230. Evidence suggests that, pre-LASPO, there was a shift towards CFAs from legal aid in very serious cases. For example, the case of *Surrey v Barnet and Chase Farm Hospitals NHS Trust*,⁶⁸ Lewison LJ highlights the fact that “*at an abstract level there was something to be said for each method [of funding]*”. This shows that providers adjusted their arrangements in anticipation of LASPO.
231. One explanation for the continued shift from legal aid to CFAs post-LASPO (in the small number of cases still within scope) that has been advanced by Leigh Day is the legal aid rates for experts providing evidence, which do not apply in CFA cases. Providers say that, in the very serious cases that remain in scope, they cannot obtain reports from the experts they require at the legal aid rates that are available. Expert fees are discussed in more detail in chapter 5.
232. The evidence regarding the volume of clinical negligence cases against the NHS suggests that, in most cases, there is little evidence of unmet need. As outlined in paragraph 224, data from NHR indicates that there was an increase in the number of claims against NHS Trusts in England, with a peak in 2013/14. However, it is important to highlight that this number was already increasing prior to LASPO. This

⁶⁷ Statistics provided by NHS Resolution.

⁶⁸ *Surrey v Barnet & Chase Farm Hospitals NHS Trust* [2018] EWCA Civ 451

supports the Coalition Government’s assertion that most cases could find alternative means of accessing funding.

- 233. As set out in the IA, it was estimated that the scope changes made to the clinical negligence category of law would lead to a 75% reduction in the volume of legal help cases and a 65% reduction in civil representation volumes in this category. From the 2009-10 baseline used in the IA, this would have been a drop of 2,500 cases for legal help and a drop of 1,500 cases for civil representation.
- 234. The analysis behind the IA assumed that all clinical negligence proceedings would be removed from scope, but that some cases would be eligible to apply for legal aid through the ECF scheme. It was assumed that the exception (as outlined in paragraph 220) would lead to an additional 700 cases remaining in scope per year.
- 235. Figure 14 provides a summary comparison of the estimates in the IA against the actual change between the new baseline year (as discussed at paragraph 121-124) of 2012-13 and 2017-18. The data shows that both the legal aid volume and spend on clinical negligence cases has declined more than was estimated in the IAs. Between 2009-10 and 2012-13 legal help matter starts fell by almost 30% for clinical negligence, and hence the original estimate was skewed.

Figure 14: Comparison of Clinical Negligence IA Estimates and Actual Change from 2012-13 and 2017-18

Level of Service	Volume Change			Spend Change		
	IA %	Actual %	Actual change	IA %	Actual %	Actual change
Legal help	-75%	-99%	-2,800	-75%	-100%	-£1m
Civil representation	-65%	-94%	-2,400	-64%	-93%	-£15m

- 236. The fall in volumes of clinical negligence cases funded by legal aid between 2012-13 and 2017-18 was 99% for legal help, going from 2,900 matter starts to 20 starts (Figure 15), compared to a 75% fall as estimated by the IA. Civil representation grants reduced by 94%, going from 2,500 to 150 grants (Figure 16), compared to a 65% fall estimated by the IA. Additionally, there have been fewer than 5 cases granted through the ECF scheme since LASPO was implemented.⁶⁹

⁶⁹ Source: Table 8.2, Legal aid statistics in England and Wales, January to March 2018

Figure 15: Clinical Negligence Legal Aid Volumes (legal help matter starts) 2008-09 to 2017-18

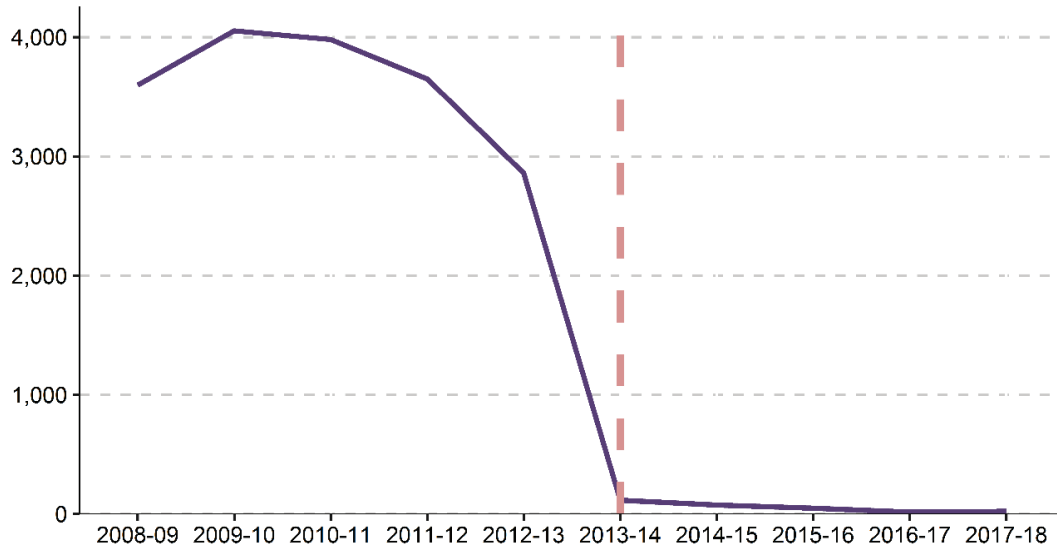
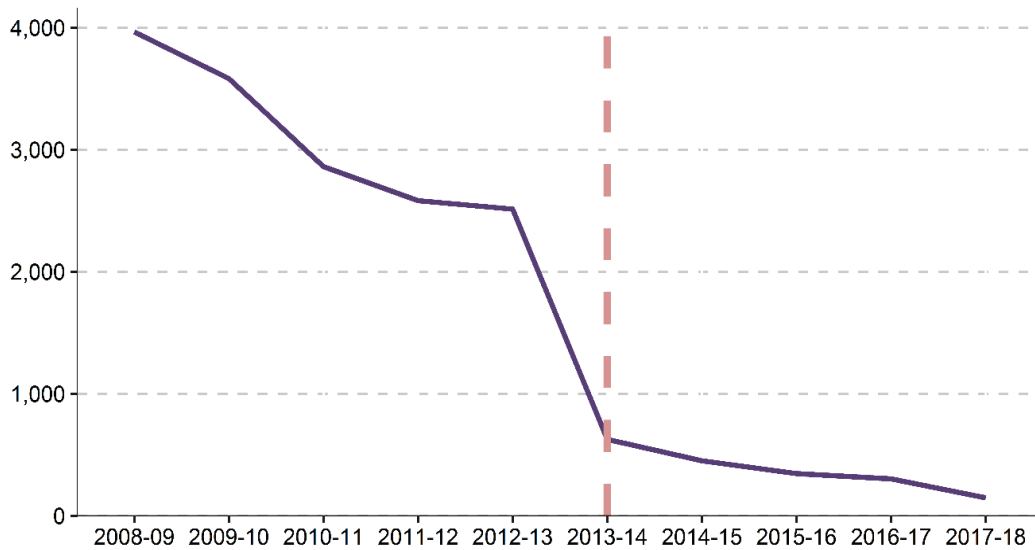


Figure 16: Clinical Negligence Legal Aid Volumes (granted certificates) 2008-09 to 2017-18



237. Therefore, when considering legal aid volumes, the scope change exceeded the estimated reductions in the IA. This is largely due to a shift towards other forms of funding – the original intention of the Coalition Government.

238. Figure 17 shows how the case-mix has changed since LASPO for legal help in clinical negligence cases. As expected, by removing this category of law from the scope of legal aid, all categories have fallen to zero volume, except for children and injury during delivery, although these volumes are fewer than 5 in each category.

Figure 17: Clinical negligence legal help case-mix change

Matter type	Volumes			Case-mix	
	2012-13	2017-18	Change	2012-13	2017-18
Physical Injury (with persistent problems)	1,100	0	-100%	36%	0%
Physical Injury (full recovery in 1 year)	980	0	-100%	31%	0%
Other	430	0	-100%	14%	0%
Fatal injury	200	0	-100%	6%	0%
Brain damage to a Minor	50	<5	-93%	1%	60%
Perinatal injury (injury sustained during delivery)	40	<5	-95%	1%	40%
Other small categories	290	0	-100%	9%	0%

239. Even for those areas still in scope (see paragraph 220) there appears to have been a clear shift towards CFAs. NHR data suggests that claims for maternity cerebral palsy/brain damage claims have remained steady – falling slightly from 223 in 2012-13 to 211 in 2017-18. The value for these claims has increased from £1.13 billion in 2012-13 to £1.86 billion in 2017-18.⁷⁰ Therefore, evidence suggests most individuals wishing to bring a claim still have the ability to do so.

Client equalities

240. The volume of clients accessing legal help in this area of law is too small to draw conclusions regarding the demographic of those still accessing legal aid.

241. For civil representation, although the volumes are also small, the majority of clients (88% in 2017-18) are now under 18, compared to 44% in 2012-13. The gender of clients remains similar with an almost even split. The proportion of clients from ethnic minority groups has remained at around 10%, although the ethnicity of around a quarter of clients is unknown across the period. Lastly, the number of clients declaring a no disability has reduced from 18% in 2012-13 to 4% in 2017-18, while those declaring a disability has increased from 49% to 61% in the same period, with about a third without reported data.

Delivering better overall value for money for the taxpayer

242. Following the move to reduce the scope of legal aid for clinical negligence cases legal aid spend in this area of law has fallen by £20m, suggesting the scope change has been economical (the first limb in the NAO criteria – outlined in paragraphs 107-113). However, as NAO report, there has been an increase in the volume and average costs for clinical negligence claims against the NHS – with legal aid reform being identified as a potential factor amongst several others (outlined above at paragraph 223). It is difficult to ascertain the role of legal aid reform amongst these other factors.

243. In terms of effectiveness, the rise in clinical negligence cases against the NHS subsequent to the scope reduction indicates that access to justice has not been

⁷⁰ NHS Resolution (see reference 66) p74.

hampered. This suggests that the Coalition Government's intention – that cases would be funded via alternative funding arrangements – has materialised and thus achieving effectiveness.

244. In terms of efficiency, the increasing volumes of unsuccessful claims against the NHS could suggest an inefficiency for the public purse, although again more work would be required to ascertain the extent to which Part 1 of LASPO has caused this. If the rise in unsuccessful claims is partly due to the increasing number of CFAs being used, it is important to highlight that CFAs were available prior to the LASPO reforms, and were growing in popularity prior to LASPO. Moreover, the volume of unsuccessful claims has increased in the wider context of an overall increase in volumes. In fact, in 2017-18 only 19% of claims were unsuccessful.
245. In terms of equity, the policy does not appear to have been unfair or inequitable. Whilst the volume of cases funded by legal aid remains low even when they remain in scope, the wider volumes of the cases that remain in scope have remained steady.
246. In conclusion, the scope change to clinical negligence appears to have delivered on some limbs of the NAO's test, but it is difficult to quantify the impact of this policy with regards to overall economy and efficiency, across Government.
247. The Government is developing a cross-government strategy to address the rising costs of clinical negligence. As part of this work the Government is looking at whether there are further measures which might reduce the legal costs of claims.

Immigration

Policy Summary

248. LASPO dealt with asylum and non-asylum immigration law cases separately. The Coalition Government took the view that these two categories had contrasting levels of importance for the individuals involved and for society, as well as differing levels of international obligations.⁷¹
249. Asylum cases were not removed from the scope of legal aid for a number of reasons. The Coalition Government believed that the nature of the issues at stake and the particular vulnerability of the client group made asylum cases a sufficient priority to remain in scope.
250. Most non-asylum cases were removed from the scope of legal aid, with some exceptions (set out below). These exceptions were identified as priority areas due to the importance of the issues at stake, as well as the absence of other routes to fund or resolve them.

Asylum:

251. Prior to LASPO, advice and assistance was available for asylum matters at the application stage. This includes matters involving humanitarian protection and Article 3 of the ECHR (prohibition on torture and inhumane treatment), as well as the Refugee Convention. Representation was provided for most appeals before the First-Tier and Upper Tribunal of the Immigration and Asylum Chamber, and any appeals before the higher courts. Advice was provided to, for example:
- i. asylum seekers in detention seeking to make a bail application;
 - ii. those seeking leave to remain in the UK; and,
 - iii. separated and unaccompanied asylum-seeking children.
252. The provision of legal aid for asylum was not altered by the LASPO scope changes.

Non-Asylum:

253. Prior to LASPO, legal aid was provided for a wide variety of (non-asylum) immigration issues, with provision covering advice on applications, advice and representation for appeals at the First-Tier and Upper Tribunal in the Immigration and Asylum Chamber, and advice on onward appeals to the higher courts.
254. LASPO removed non-asylum immigration cases from the scope of legal aid, except for the following case types:
- i. Immigration detention, including cases where the client detained is seeking asylum.
 - ii. Proceedings before the Special Immigration Appeal Commission (SIAC).
 - iii. Applications and appeals for indefinite leave to remain and residence cards under the specific Immigration Rules relating to victims of domestic violence.

⁷¹ See p37: <https://webarchive.nationalarchives.gov.uk/20111013060755/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-consultation.pdf>

- iv. Applications for leave to enter or remain in the UK where the individual is a victim of trafficking or there are reasonable grounds to believe that the individual is such a victim;
 - v. Judicial review of certain immigration decisions. This is limited to where there has not been a previous unsuccessful appeal or judicial review on substantially the same issue in the previous 12 months.
255. LASPO was further amended by the Modern Slavery Act 2015⁷² to increase the scope to include legal aid for applications for leave to enter, or to remain, where the individual is a victim of slavery, servitude or forced or compulsory labour, or there are reasonable grounds to believe that the individual is such a victim.
256. In July 2018, the Government also committed to expanding the scope of legal aid to immigration matters covering separated children.⁷³ Following a judicial review brought by The Children's Society, the Ministry of Justice examined the evidence in that case and data on applications for funding. Because of the distinct nature of the individuals affected and as a result of the data review, the Government decided to bring these cases into scope of legal aid. The amendment will be laid in due course following discussion across Government and with external stakeholders.

⁷² See: http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted_s47, paragraph 2

⁷³ See: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-07-12/HCWS853/>

To what extent has the LASPO scope change achieved its original objectives in this area?

Methodology

257. The following analysis for immigration legal help is split into asylum and non-asylum cases. To be able to distinguish the two from the LAA data, claims data has been used, rather than matter starts as for the other civil categories. Given that the average duration of both asylum and non-asylum legal help claims is less than a year, the vast majority of cases have completed and this should not have any impact on the analytical accuracy of the trends.
258. For civil representation, the data collection did not distinguish between asylum and non-asylum issues until 2012-13, and the recorded data has not shown the split accurately until 2016-17. In the last two years (2016-17 and 2017-18) over 90% of the civil representation grants have been recorded as asylum work.
259. For immigration cases, legal representation at a tribunal can be carried out under Controlled Legal Representation, which does not require a certificate to be granted in advance.⁷⁴ The trends for legal help in the following analysis also includes CLR.

Making significant savings to the cost of the scheme

260. Overall, the policy change has achieved its objective of making significant savings in the immigration law category. In line with the change in volumes, the change saved less than anticipated for legal help, but saved more than anticipated for civil representation.
261. Due to the estimated 89% fall in volumes, the IA estimated a 92% drop in immigration legal help expenditure. For civil representation, it was predicted that volumes would reduce by 20%, and spend by 24%. From the 2009-10 baseline used in the IA, this would have been a drop of 53,000 cases for legal help, saving £20m, and a drop of 290 cases for civil representation, saving £1m. This is shown in Figure 18.

Figure 18: Estimated non-asylum Immigration Scope Changes outlined in the IA

Level of Service	Change in case volumes	Proportion of cases	Reduction in Spend	Proportion of spend
Legal Help	-53,000	92%	-£20m	89%
Civil Representation	-290	20%	-£1m	24%

262. Figure 19 shows a summary comparison of the estimates in the IA and the actual change between the new baseline year of 2012-13 and 2017-18. Figure 20 provides greater detail on spend.

⁷⁴ From September 2018 Upper Tribunal cases are granted under certificates.

Figure 19: Comparison of Immigration IA estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Change			Spend Change		
	IA %	Actual %	Actual change	IA %	Actual %	Actual change
Legal Help (asylum)	0%	-9%	-3,500	0%	0%	0m
Legal Help (non-asylum)	-92%	-85%	-20,100	-89%	-80%	-£9m
Civil Representation		-62%	-1,900		-64%	-£7m

Figure 20: Immigration Estimated Spend: 2012-13 baseline year and 2017-18 estimates

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help asylum	£30m	£30m	0%
Legal Help non-asylum	£10m	£2m	-80%
Civil Representation	£10m	£4m	-64%

263. Since the introduction of LASPO, spend on legal help in non-asylum immigration cases has declined by 80% from £10m to £2m. This is less than the 89% estimated in the IA, although a greater proportion of non-asylum cases are being funded through the ECF scheme, which the IA did not anticipate. The total reduction in spend on non-asylum immigration legal help (£9m) is less than the £20m anticipated in the IA, because the decline in volumes before the scope changes reduced the actual spend before LASPO.

264. However, civil representation spend for both asylum and non-asylum immigration has declined by a greater extent than anticipated. Spend reduced by £7m, rather than £1m, because the volume of cases fell by 1,900, rather than 290 anticipated in the IA. This could be due to the decline in the number of immigration and asylum receipts more widely, due to more judicial reviews being funded under Public Law contracts or changes to the judicial review remuneration provisions, discussed in more detail in chapter 3.

265. Therefore, immigration scope change has met its objective of making significant savings to the cost of the scheme.

Discouraging unnecessary and adversarial litigation at public expense

266. Whilst the scope changes were focused on reducing the remit of legal aid, the decisions as to what was a sufficient priority to remain in scope were based on factors such as the ability of the individual to self-represent, the likelihood of breach of international obligations in the area of law, and the availability of alternative sources of advice and funding. Therefore, the impact of the scope changes on the volumes of legal aid has been largely considered on the next objective – whether LASPO has been successful at targeting legal aid at those who need it most.

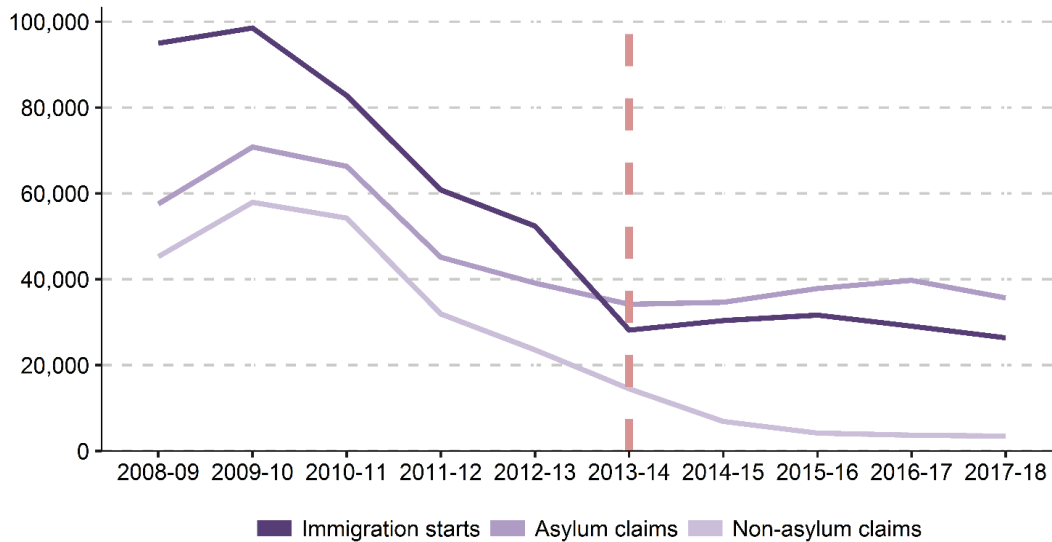
Targeting legal aid at those who need it most

267. The changes to the scope of legal aid for immigration matters were designed to ensure that legal aid remained available for the highest priority of cases. The policy has been successful at targeting legal aid towards asylum cases, which the Government deemed were the highest priority in this context.

268. Matter starts for immigration cases cannot be broken down into asylum and non-asylum cases until a claim for the case is made. This is because providers are not required to record the specific sub-category at the start of a case as they may not know at the beginning of the case or the nature of the case may change. It was estimated in the IA that the removal of (most) non-asylum immigration matters from the scope of legal aid would lead to a 92% decline in non-asylum immigration Legal Help volumes.

269. Figure 21 shows how the number of legal help matter starts in immigration cases has declined since 2009-10. Between 2009-10 and the pre-LASPO baseline year (2012-13) the number of starts fell from 98,500 starts to 52,400. From 2013-14 onwards, the volume of matter starts is stable. This graph illustrates the extent of the pre-LASPO decline which affected the extent to which the estimate outlined in the IA was realised.

Figure 21: Immigration Volumes (legal help matter starts, and claims) to 2017-18



270. An assessment of immigration claims data demonstrates that volumes of asylum legal help claims has remained broadly stable between 2011-12 to 2017-18. In contrast, the number of non-asylum legal help claims has fallen over the same period from 31,900 to 3,500. This demonstrates that the decline in legal help matter starts between 2012-13 and 2013-14 of 24,200 was partly due to the removal of non-asylum work from the scope of legal aid and other factors such as a reduced lack of awareness.⁷⁵

271. Figure 22 provides a breakdown of the case-mix of non-asylum immigration legal help cases and the changes throughout the period. The table demonstrates that, as expected, the areas of law which were affected by scope changes have also seen the greatest level of decline in volumes. The remaining legal help volumes, in

⁷⁵ The total number of immigration claims in a given year is greater than the number of matter starts because it is possible for a single matter start to produce more than one claim as different stages of the case are billed separately. A client going through the immigration process may make multiple claims.

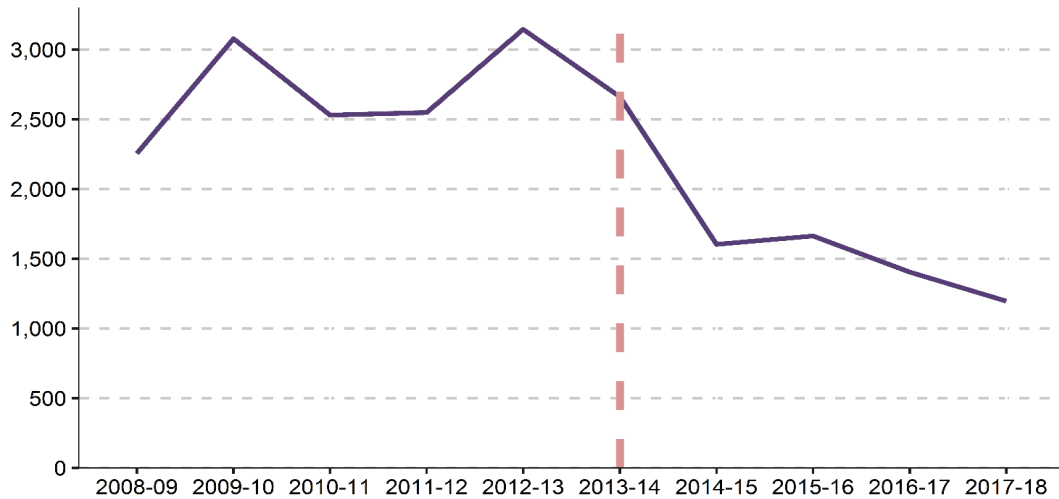
categories such as ‘Leave to Remain’ (which was removed from scope), have been granted legal aid through the ECF system. The only categories of work to increase in legal help volume since LASPO are bail and domestic violence related work, and the latter is a new category in terms of data collection so is incomparable to pre-LASPO levels.

Figure 22: Legal help case-mix in 2012-13 and 2017-18 for Non-Asylum Immigration

Matter type	Volumes			Case-mix	
	2012-13	2017-18	Change	2012-13	2017-18
Grant/Variation of Leave to Enter/Remain	24,600	160	-99%	39%	2%
Family members application/appeal	11,500	240	-98%	18%	3%
European Union Law/EEA	5,200	100	-98%	8%	1%
Removal/Deportation	4,100	280	-93%	6%	3%
Bail	3,800	5,200	+37%	6%	59%
Immigration Removal Centre Work	2,500	640	-74%	4%	7%
Judicial Review	1,300	550	-58%	2%	6%
Application for leave relating to Domestic Violence	0	700	New	0%	8%
Other small categories	10,300	900	-91%	16%	10%

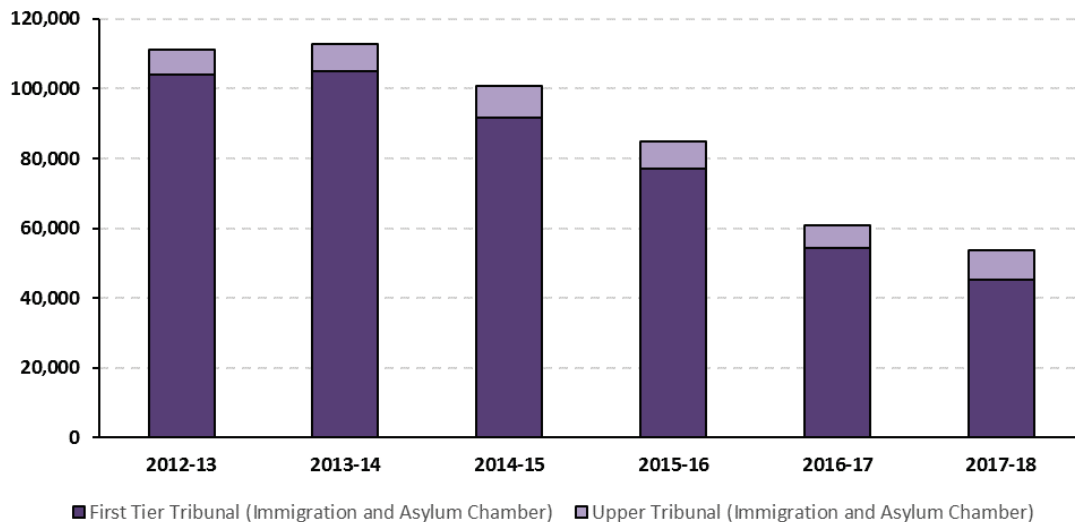
272. For civil representation, the IA estimated a 20% drop in volumes of immigration cases. In contrast to legal help, civil representation for immigration law saw no considerable decline in volumes prior to LASPO. As a result, the impact of LASPO is more apparent. Civil representation volumes fell by 62%, between 2012-13 and 2017-18, going from 3,100 certificates granted to 1,300 (Figure 23).
273. When considering both asylum and non-asylum cases in 2017-18, 85% of civil representation certificates granted were for judicial review, which is a similar proportion to that in 2012-13 (88%), although the volume of other cases has of course reduced, as discussed previously. Of the 1,200 certificates granted from 2017-18, fewer than 30 were for non-asylum, other, or cases where it is not possible to tell from the recorded information.

Figure 23: Immigration Volumes (civil representation granted certificates) – 2008-09 to 2017-18



274. As Figure 24 shows, over the last 6 years, the volume of receipts (all cases – not just cases where legal aid funding is present) peaked in 2013-14, but have since declined considerably. As such, the fall in legal aid cases could also be attributable to the general fall in immigration and asylum cases that are now passing through the system, for whatever reason.

Figure 24 – immigration and asylum receipts (2012-13 to 2017-18)



275. Overall, the immigration scope change has targeted legal aid towards asylum cases (although they were previously in scope), as was intended at the outset of the policy. Some unintended or secondary impacts of this change has been discussed below at paragraph 285.

Client equalities

276. There was the sense, from stakeholders, that protected groups, and vulnerable people more generally, had been adversely impacted by the immigration scope changes.
277. LAA client diversity data for legal help considers asylum separately to non-asylum cases. For asylum cases, the distribution of clients across the respective age group has remained broadly the same. Similarly, the proportion of male clients has remained broadly the same (72% in 2012-13 to 74% in 2017-18). The proportion of clients from ethnic minorities has decreased from 55% in 2012-13 to 40% in 2017-18. However, given the nature of asylum cases, it is likely that a high proportion of clients of which their ethnicity is unknown (43% in 2012-13 and 55% in 2017-18) may be from ethnic minorities. Clients declaring a disability remained steady with 4% in 2012-13 and 5% in 2017-18, although there was no recorded data for 29% and 20% in those years respectively.
278. For legal help in non-asylum cases, the distribution of clients across the respective age group has remained broadly the same. There has been an increase in the proportion of male clients, from 58% in 2012-13 to 67% in 2017-18. Around one third of clients' ethnicity is not reported, but the proportion of ethnic minority clients has declined from 63% in 2012-13 to 55% in 2017-18. The proportion of clients declaring a disability was 6% in 2012-13 and 8% in 2017-18, although the response is not recorded from 27% and 35% respectively.
279. For civil representation, the client diversity data does not separate asylum and non-asylum cases. The age and gender distribution of clients remains broadly similar, with 71% male in 2012-13 and 72% male in 2017-18. In 2017-18 49% of clients were from an ethnic minority background, with a further 39% unknown, which is broadly unchanged from 2012-13. The proportion of clients reporting a disability has increased from 11% in 2012-13 to 22% in 2017-18, although the declining proportion of those without recorded data (from 26% to 10% over the same period) could be the masking the true effect.

Delivering better overall value for money for the taxpayer

280. Using the NAO criteria outlined in the introduction (paragraphs 107-113) we can conclude that the scope changes to legal aid provision for immigration matters have been largely economical, since there has been a £15m reduction in spend on immigration matters following the introduction of the scope changes.
281. To assess overall value for money it is necessary to consider the extent to which costs have been shifted away from the legal aid fund and towards other parts of government. Indeed, Coram Children's Legal Centre (Coram) and others have argued that these costs have been shifted onto local authorities to an extent which may outweigh that of the corresponding legal aid provision. Due to data limitations, it is not possible to assess the extent to which this cost shifting has taken place.
282. Another aim was to better target legal aid at those who need it most which, in this case, was deemed to be asylum seeking applicants. As such, this policy has been broadly effective, although volumes of asylum cases have dropped slightly. Whilst there were no scope reductions to such applicants, the scope changes elsewhere may have unintentionally reduced awareness more widely, or wider factors may be driving these trends.

283. Some stakeholder feedback suggests that efficiency and equity may have been hampered by these policies. In particular, stakeholders have pointed towards issues pertaining to self-representation by particularly vulnerable groups and the risk of losing broad legal expertise in all immigration matters as providers specialise in asylum law. Data limitations prevent us from properly assessing the efficiency and equity effects of these scope changes, nor can we robustly address whether the savings represent savings to the government as a whole or the LAA alone. Consequentially, it is not possible to make a firm conclusion regarding the extent to which these policies represent better overall value for money for the taxpayer, although some of the key themes heard through engagement have been discussed below.
284. Isolating the impact of LASPO against a multitude of other variables across Government and wider society is complex, hindering the availability of clear and reliable data. However, the Government recognises that determining the extent to which LASPO changes represented overall value for money for the taxpayer is important, and to do this we must obtain a better understanding of this purported cost transference. We will be continuing our work with colleagues across Government to improve our collected data on this issue to inform our assessment of this.

Other themes from the evidence gathering phase

Availability of provision

285. During the evidence gathering phase of the review, interested parties (such as the Immigration Law Practitioners Association) raised concerns over the availability of providers to undertake immigration law cases. It has been claimed that, since the introduction of LASPO, it has become more difficult for organisations and charities to refer individuals, who may be eligible for legal aid, to an appropriate provider. The number of providers is discussed in more detail below.
286. The Anti Trafficking and Labour Exploitation Unit (ATLEU) raised concerns regarding areas of the country where people are unable to access legal advice due to the geographic availability of providers. It was also claimed that there is significant demand for the services in affected areas and, as a result, people are having to travel long distances to access support. Stakeholders were sceptical that those outside of the metropolitan areas of London, Birmingham and Manchester, would be able to obtain legal advice.
287. Coram also reported a lack of immigration advice providers in the North and North-East of London. It reported that *“where it has been able to secure ECF for these clients, in 25% of cases it has taken over a month to find a solicitor to take on the case because there is such a shortage of legal providers.”*⁷⁶
288. Since 2000, people receiving Government support who are being processed through the asylum system have been dispersed throughout the country. It was argued that this factor is the key driver of demand for immigration lawyers in some areas of the country. Anecdotal evidence from practitioners and advice providers suggests that, due to the limited nature of coverage, individuals have found themselves unable to access legal advice after being dispersed as there are no providers in the local area.
289. Practitioners have stated that, due to the reductions in legal aid in immigration matters, there has been a trend towards immigration practitioners specialising in specific areas of immigration law. Firms are increasingly focusing on asylum law, specifically because it remains in scope of legal aid funding. As a result, fewer practitioners now have a broad knowledge of the entire immigration system. It has been claimed that this is having a detrimental impact upon providers’ ability to effectively redirect the cases of individuals presenting with an immigration issue.
290. Although there has been a decline in the number of providers, some third sector organisations asserted during the evidence gathering phase that other forms of advice have increased, including fee-charging private providers, lawyers undertaking pro-bono work, the third sector, or increased support from individuals’ own support network (including friends and/or family). However, some interested parties cautioned that, those trying to afford fee-charging advice, are at a greater risk of exploitation. Whilst anecdotal evidence is important and valuable, LAA data suggests that, since 2012-13, there has been a 15% decline in the number of providers completing immigration cases. This decline is to be expected due to

⁷⁶ Coram Children’s Legal Centre. 2017. *This is my home: securing permanent status for long-term resident children and young people in the UK*. See p9: https://www.childrenslegalcentre.com/wp-content/uploads/2017/06/Thisismyhome_FullReport.pdf

reduced demand for legally aided work following the reduction in the scope of legal aid for immigration law.

291. LAA data also shows that there is some regional variation in the reduction in providers. Some regions have had an increase in the number of providers doing immigration work compared to 2012-13 (Merseyside, North East, North West, West Midlands, Yorkshire and Humberside), whilst the number of providers have fallen in others, including the Eastern region (-50%) and London (-35%), as shown in Figure 25.

Figure 25: Providers Completing Immigration Work by Region - 2012-13 vs 2017-18

	Number of providers completing immigration work in 2012-13	Number of providers completing immigration work in 2017-18	Percentage change
East Midlands	9	6	-33%
Eastern	10	5	-50%
London	162	106	-35%
Merseyside	2	5	150%
North East	8	11	38%
North West	11	17	55%
South	11	9	-18%
South East	7	5	-29%
South West	8	7	-13%
Wales	14	14	0%
West Midlands	28	30	7%
Yorkshire and Humberside	20	32	60%
Total	290	247	-15%

292. The change in the number of immigration providers in local authority areas in each region is detailed in Figure 26. Although, concerns have been raised about the number of providers in a local authority, this cannot be directly compared to LAA procurement areas. The LAA have 6 procurement areas, each containing 26 access points (totalling 156 access points) whereas there are over 300 local authority areas.
293. Although the total number of providers completing immigration work has reduced by 247 overall, in a number of regions this has not increased the number of local authorities with no providers completing immigration work. London has had the largest increase in the number of local authorities with no providers completing immigration work. However, as local authorities in London are geographically small, it is unlikely that LASPO has caused a substantial increase in the distance individuals in London will have had to travel to receive legal advice, although this may not be the case for the Eastern region.

Figure 26: Changes in the number of local authorities with no offices completing immigration work - 2012-13 vs 2017-18

	Number of local authorities with providers completing immigration work in 2012-13	Number of local authorities with providers completing immigration work in 2017-18	Change in the number of local authorities with providers completing immigration work (from 2012-13 to 2017-18)	Total number of local authorities in the area ⁷⁷
East Midlands	4	2	-2	40
Eastern London	6	2	-4	47
London	32	27	-5	33
Merseyside	1	1	0	N/A
North East	3	4	+1	12
North West	8	7	-1	39
South	7	6	-1	N/A
South East	4	4	0	67
South West	5	3	-2	37
Wales	4	4	0	22
West Midlands	7	5	-2	30
Yorkshire and Humberside	8	8	0	21
Total	89	73	-16	348

294. It is important to note that not having a provider based within the local authority area does not mean the local population does not have access to legally aided advice. As the LAA awards its contracts by local procurement areas that are larger than local authority areas (there are around 156 LAA procurement areas for immigration and over 300 local authority areas), many providers will work with clients who live in a different local authority area from where their (the provider's) office is located.

295. The number of offices holding immigration law contracts reduced by 11%, and the number of offices closing cases reduced 14% between 2012-13 and 2017-18, the latter signifying the number of offices actively undertaking work. The close proximity of these two figures provides an indication that the majority of providers holding contracts are undertaking work in this area. However, this measure can only be seen to provide an indication of the extent to which providers are being utilised as the significant length of time taken to complete immigration cases could be masking firms that are no longer taking on new cases.

296. It has been argued by some organisations that even in areas where there are solicitor's firms undertaking legally aided immigration work, individuals and charities have difficulty finding an immigration provider willing to take on their case. It is

⁷⁷ These regions are LAA office regions, so do exactly mirror official Office for National Statistics regions.

claimed that providers currently holding legal aid contracts no longer find it financially viable to undertake cases and so are no longer accepting legally aided clients. For instance, Refugee Action state *“this is particularly a problem for cases that are more complicated, as there is little incentive for representatives to take them on when they know that they will not receive payment commensurate with the time spent working.”*⁷⁸ However, the provider’s contract with the LAA states that “good cause” for declining Controlled Work *“does not include any considerations regarding the level of any [Standard or Graduated] fee you [the provider] may be entitled to receive under this Contract.”*

297. Each provider, as part of their contract with the LAA, has a maximum number of matter starts for controlled work a given area of law. Between 2012-13 and 2017-18, the total number of allocated maximum matter starts has fallen at a greater rate than the number of offices with contracts (-51% vs -11%), which suggests that each office on average now has a lower number of matter starts than it did pre-LASPO. This is to be expected as a consequence of reducing scope, and consequently the number of potential cases.
298. It is possible to assess the frequency with which providers are cancelling contracts on the basis of ‘contract viability’. Cancelling contracts for this reason means that firms withdrew from a contract as the work was no longer financially viable or they wished to concentrate on another area of work perceived as more commercially viable. It is important to note that the overall volume of immigration and asylum cases has declined, not just the volume of legally aided funded cases, which may have impacted on the financial viability of undertaking this work.
299. In 2017-18, there were 309 current contracts to do immigration work and over the year, 11 (of 35 total cancellations and cancellation requests) were cancelled or requested to cancel with commercial viability cited as the provider’s reason. This means that of all contracts for immigration work in 2017-18, 4% were cancelled citing commercial viability. This is an increase on the proportion of contracts that were cancelled for this reason in 2012-13 (12 cancellations, or 1% of all contracts).
300. We are keen to explore how provision, particularly to those in rural areas, can be expanded through the use of technology. We have set this out in our Action Plan.⁷⁹

Ability to Self-Represent

301. A number of interested parties, including Amnesty International, the British Red Cross and The Children’s Society, have expressed that they find the reasoning for the reduction in legal aid inconsistent with the level of regulation of immigration advice, which limits the sources of advice and assistance because immigration law is complex and often changes⁸⁰. Since 1999 there have been eight new Immigration

⁷⁸ Refugee Action. 2018. *Tipping the Scales: Access to Justice Report*. See p6 <https://www.refugee-action.org.uk/tipping-scales-access-justice-asylum-system/>

⁷⁹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

⁸⁰ Amnesty International (see reference 52)
 British Red Cross. 2015. *Not so straightforward*; See: <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/improving-the-lives-of-refugees/refugee-family-reunion>
 Children’s Society. 2015. *Cut off from justice*. See: <https://www.childrenssociety.org.uk/legal-aid>

Acts. The number of immigration rules has doubled since 2010 and concern has also been raised around the complexity of the rules.

302. Interested parties have asserted that expertise and specialist knowledge is required to understand the substance of immigration law, how it applies to a particular case, how to articulate a legal argument, and how to gather evidence. The difficulties associated with this are exacerbated by language barriers and poor literacy and communication skills among some individuals seeking immigration advice.
303. For example, Coram highlight that *“there are four different forms used for Article 8 (right to respect for private and family life) applications, each fulfilling a range of different purposes that are not obvious unless the applicant understands from the Immigration Rules which route to settlement they would be applying for.”*⁸¹
304. As part of the work done by the Law Commission, the Government are simplifying the immigration rules.⁸² The project is currently at initiation stage. The aims for the project are:
- i. To review the Immigration Rules to identify principles under which they could be redrafted to make them simpler and more accessible to the user, and for that clarity to be maintained in the years to come.
 - ii. The project might include consideration of the structure and drafting of the Rules, the timing and frequency of amendments to the Rules, the division of material between Rules and guidance and the way in which the Rules are published. The Commission will seek to identify the underlying causes of excessive length and complexity in the Rules and make recommendations to improve them for the future.
 - iii. The project will include a public consultation. It will conclude with a report setting out the Commission’s recommendations and including a redraft of some of the Rules putting some of those recommendations into effect.
305. Interested parties also report that UK Immigration Rules can be difficult for individuals to navigate due to the unavailability of legal aid for family reunion applications.⁸³ These organisations consider that family reunion is not a ‘straightforward immigration matter’ and legal advisers play an essential role in identifying and obtaining evidence that can support an application and referring to precedent and existing policy and guidance, particularly in cases that are not ‘standard’ reunification cases, such as cases involving adoption, stepchildren and siblings. The British Red Cross study found these more complex cases occurred in 23% of cases and affected 25% of all child applicants.⁸⁴
306. Many interested parties (including the Office of the Children’s Commissioner and Joint Committee on Human Rights) have made the case for legal aid for separated children with immigration issues. Separated children are in the care of children’s

⁸¹ Coram Children’s Legal Centre. 2018. *Rights without remedies*. See p67: <https://www.childrenslegalcentre.com/rights-without-remedies/>

⁸² See: <https://www.lawcom.gov.uk/project/simplifying-the-immigration-rules/>

⁸³ Young Legal Aid Lawyers. 2018. Evidence submission to this review. See: <http://www.younglegalaidlawyers.org/LASPOP1>
Amnesty International (see reference 52)

⁸⁴ British Red Cross (see reference 80)

services, and the laws, processes and systems governing their circumstances can be complex. The Children’s Society interviewed a number of unaccompanied and separated migrant children and found a wide range of vulnerabilities, including trafficked children, children left without documents or status as a result of breakdown of family relationships, destitute undocumented children sofa surfing, and children brought to the UK and abandoned by their parents shortly after arriving without an attempt to resolve their status beforehand.⁸⁵

307. There are routes for undocumented children to regularise their status, however it was reported that such applications can be difficult without advice and representation. Many of the young people The Children’s Society spoke to were not entitled to legal aid and experienced periods of material and psychological hardships, including mental health problems and periods of destitution.⁸⁶ Coram argue that LASPO has shifted these costs onto local authorities, and that the restoration of legal aid for all migrant children would result in an annual saving for the Government.⁸⁷ This was echoed by Amnesty International, the Office of the Children’s Commissioner, and Just for Kids Law.⁸⁸ As previously mentioned, the Government have committed to introducing legal aid for separated child migrants, for immigration matters.
308. Part of the rationale for the scope change was that going to a tribunal is an accessible process that allows individuals to be able to make a successful application without legal representation. The application process is designed to be relatively straightforward, with support provided where necessary to vulnerable individuals.
309. As part of the HMCTS reform programme, we are exploring how we can improve services for immigration and asylum cases (as well as public family law). This includes updating the service so cases can be managed digitally. For example, this will enable evidence to be submitted and shared electronically, meaning cases can be managed more securely and effectively.

Accuracy of decision making

310. In ensuring access to just outcomes in immigration cases, stakeholders have noted the importance of the accuracy of decision making in other government departments. For example, Asylum Aid have questioned the quality of decision making in relation to statelessness. This was echoed by Coram in relation to initial asylum decisions. In March 2015 the Justice Select Committee reported that it was “*particularly alive to the fact that poor decision-making by other Government*

⁸⁵ The Children’s Society (see reference 80)

⁸⁶ Ibid

⁸⁷ Coram Children’s Legal Centre (see reference 81)

⁸⁸ Office of the Children’s Commissioner and Just for Kids. 2014. *The impact of Legal Aid changes on children since April 2013*. See p8: <https://justforkidslaw.org/news/just-for-kids-law-research-conducted-for-childrens-commissioner-highlights-impact-of-legal-aid-cuts-on-vulnerable-young-people/>

Departments leads to increased costs for the Ministry of Justice through increased use of HMCTS and grants of legal aid.”⁸⁹

311. The Home Office have introduced a range of measures since 2010 to support the quality of decision making in United Kingdom Visas & Immigration, including training and mentoring programmes for new caseworkers as well as a wider assurance process. Assurance processes follow the ‘3 lines of defence’ model. Case sampling, regular and systematic analysis of allowed appeal rates, as well as other sources of information such as complaints and MPs’ correspondence, are used to improve the consistency and effectiveness of decision making across all routes.
312. Other initiatives have been piloted since 2010, including the use of Assisted Decision-Making tools to encourage consistency in decision making, the streaming of cases to ensure that the most complex cases receive an appropriate level of attention, and review of decisions by presenting officers to ensure that decisions are fair and robust before reaching appeal.
313. Despite the clear improvements since 2010, the Home Office recognises that further improvements are needed to the sustainability of decisions and the quality of engagement with applicants. A new central UK Visas and Immigration (UKVI) Chief Caseworker Unit was established at the start of June, led by the newly created post of Chief Caseworker, and supported by a cadre of experienced senior caseworkers recruited from across the Home Office. This new unit will bolster case-working expertise and ensure that caseworkers have a clear escalation route where they have a concern or require specialist guidance. A new post of UKVI Caseworker Training lead has been created and appointed. This will help improve decision-maker training capability, establish career paths for decision makers and help to create a stronger and more customer focused culture. A series of initiatives are in train which test, trial and implement new working processes across UKVI and help reduce the number of refusal decisions overturned at appeal. We will continue to work across Government to explore decision making.

⁸⁹ Justice Select Committee. 2015. *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*. See: <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf>

Personal Injury

Policy Summary:

314. Personal injury is a diverse area of law associated with claims for damages in response to injury inflicted because of alleged malpractice, negligent actions and deliberate assault/recklessness. Prior to LASPO, legal aid funding for personal injury claims had been generally excluded from scope. However, some personal injury claims for cases involving a claim against a public authority were still within scope, as well as cases involving the significant wider public interest, abuse of child or vulnerable adult cases, sexual assault cases and claims for victims of trafficking and modern slavery.
315. Following the LASPO scope change, legal aid was limited to personal injury claims when a public authority had either abused its position or powers, or, where it had breached the applicant's Convention rights, where there was sexual assault, abuse of child or vulnerable adult and any EU cross-border claim.
316. This change was made on the basis that legal aid resources should be targeted at the highest priority of cases and that adequate alternative funding models were available to applicants. The availability of CFAs was a motivating factor for the Coalition Government to remove some personal injury claims from the scope of legal aid.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

- 317. LASPO does appear to have successfully made savings on personal injury law for legal help, although expenditure on this category has been historically small. Estimated legal help spend has declined from less than £0.5m prior to LASPO (2012-13) to zero in 2017-18.
- 318. The situation is more difficult to assess for civil representation, as the very small volumes (fewer than 15 certificates granted each year since 2009-10) combined with the wide variation of costs in this category of law make it impossible to quantify the change in expenditure due to LASPO. Immediately after LASPO volumes fell to zero, but the most recent two financial years have seen a rise in granted certificates which may reflect the influence of factors other than LASPO.

Discouraging unnecessary and adversarial litigation at public expense

- 319. The purpose of this reform was not to discourage unnecessary and adversarial litigation at public expense but instead ensure legal aid was available in the highest priority cases (see next objective).

Targeting legal aid at those who need it most

- 320. The IA anticipated that legal help volumes for personal injury claims would reduce by 92% and civil representation volumes would reduce by 80%, with an associated reduction in legal aid spend of 91%. From the 2009-10 baseline used in the IA, this would have been a drop of 1,700 cases for legal help and a drop of 760 cases for civil representation.

Figure 27: Personal Injury Scope Changes in the IA

Level of Service	Change in case volumes	Proportion of cases	Change in Spend	Proportion of spend
Legal Help	-1,700	91%	-£0.5m	91%
Civil Representation	-760	81%	-£3m	80%

- 321. Personal Injury cases have extremely long durations – 60% of civil representation cases which closed in 2009-10 were granted funding prior to the Access to Justice Act 1999. By 2012-13 a greater proportion of the pre-1999 Act cases had closed and so volumes were much lower, as the 1999 Act had already almost completely removed legal aid funding for personal injury cases. The IA expected that under the LASPO regime fewer than 10 cases per year would remain in scope for civil representation once the changes had taken full effect and pre-1999 Act cases had closed.

Figure 28: Comparison of Personal Injury IA Estimates and Actual Change between 2012-13 and 2017-18

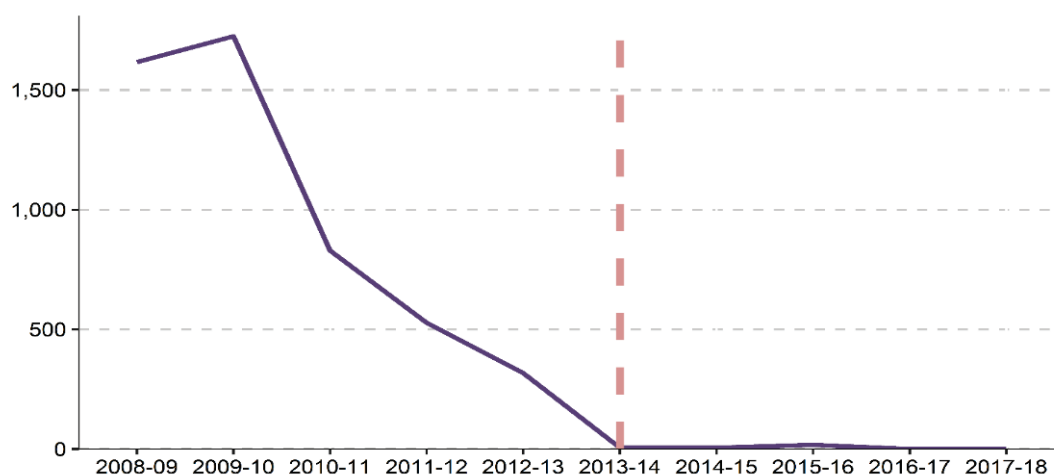
Level of Service	Volume Change			Spend Change		
	IA %	Actual %	Actual change	IA %	Actual %	Actual change
Legal Help	-91%	-100%	-320	-91%	-100%	£0m
Civil Representation	-81%	+1000%	+10	-80%	+1000%	£0m

322. The volume of personal injury cases declined more than was estimated following LASPO. However, since LASPO personal injury cases are now recorded under other categories of law, most notably the Miscellaneous category (discussed below).

323. Moreover, this could relate to other factors, beyond the influence of legal aid. For instance, the Jackson Reforms attempted to redress the imbalance between the claimant and the respondent, as it was previously believed that liability for legal fees often fell too heavily on one party. As a result, the volumes of personal injury cases was expected to decline. This is considered in more detail in the PIR for Part 2 of LASPO.⁹⁰ In addition, the volumes of personal injury claims were low before LASPO, and as such conclusions can be difficult to draw.

324. Legal help volumes were decreasing before LASPO, but fell from 320 in 2012-13 to zero in 2017-18. In total, since LASPO’s implementation there have been 30 legal help matters started. This decline is illustrated in Figure 29.

Figure 29: Personal Injury Volumes (legal help matter starts) 2008-09 to 2017-18

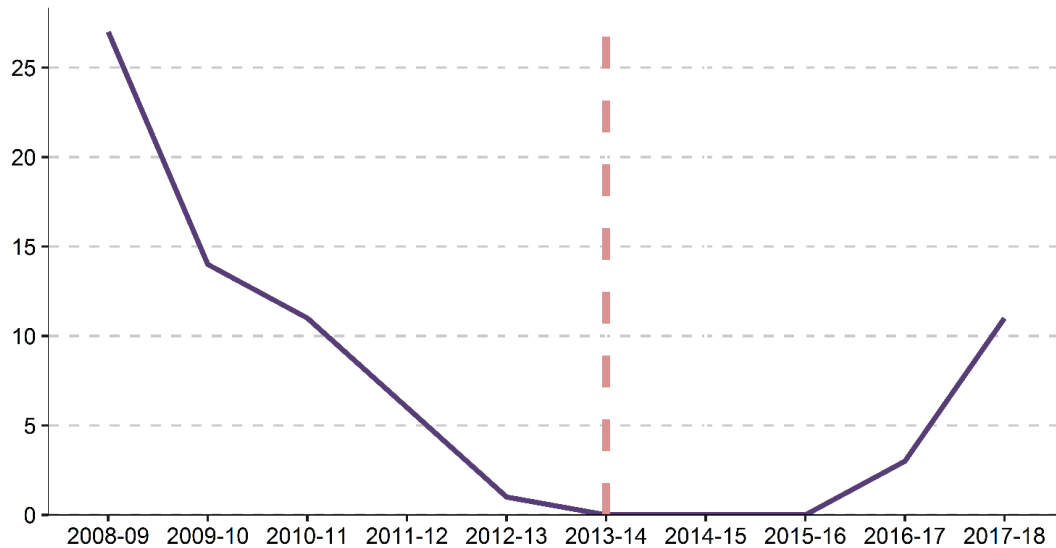


325. For civil representation, a fair comparison cannot be made with the volume decline estimated by the IA due to the inclusion of cases opened prior to the Access to Justice Act 1999. Only one civil representation certificate was granted in 2012-13. This is a more accurate reflection of the impact of the pre-LASPO situation once the effects of the Access to Justice Act is taken into consideration. While the increase in

⁹⁰ See: <https://www.gov.uk/government/publications/post-implementation-review-of-part-2-of-laspo>

grants appears significant between 2014-15 and 2017-18, this is due to the very low volume of cases involved. This trend is outlined in Figure 30.

Figure 30: Personal Injury Volumes (civil representation granted certificates) 2008-09 to 2017-18



326. Overall, the scope change for personal injury law has been successful in reducing the volume of legal aid cases.
327. Continuing the theme of resolving personal injury cases without the need to engage legal advice, the Government are attempting to make the justice system more accessible in this area. As part of the wider implementation programme for Part 1 of the Civil Liability Act 2018 the Government will be delivering, alongside design partners the Motor Insurers' Bureau, a simple and easy to use, claimant focused, web based portal to enable claimants with road traffic accidents (RTA) personal injury damages valued at under £5,000 to progress their case to successful resolution without the need to engage legal advice.

Client equalities

328. The volume of clients accessing legal help in this area of law is too small to draw conclusions regarding the demographic of those still accessing legal aid. Previously clients were largely white (72% in 2012-13, although 17% not reported), with slightly more male clients (54%), a fairly even spread of age groups and 21% declared a disability, with a further 29% unknown.
329. For civil representation, the volumes are too low (pre- and post-LASPO) to make a comparison, as they can be easily skewed year-on-year.

Delivering better overall value for money for the taxpayer

330. The two primary aims of this policy were to make significant savings to the cost of the scheme, and to better target legal aid at those most in need. Due to data limitations (and the small number of cases both before and after LASPO) this policy cannot be assessed in sufficient detail to properly assess whether it was effective and/or achieved economy.

331. Both, in conjunction with efficiency and equity impacts of the policy, are needed to evaluate whether this policy represents value for money to the taxpayer as outlined in the introduction (paragraphs 107-113). For example, if the decline in take-up is due to the market more efficiently achieving funding via CFA, this policy has raised efficiency. Conversely, this would not be the case if low take-up is due to a lack of awareness of the availability of legal aid.
332. Thus, due to data limitations and very low case volumes and spend we have been unable to assess the value for money against the NAO criteria for this policy.

Education

Policy Summary:

333. Prior to the implementation of LASPO, legal aid funding was available for a variety of educational matters. This included advice and assistance for issues such as school admissions and exclusions, out of school provision, bullying, school and nursery reorganisation proposals, and student disputes with universities and further education institutions.
334. Funding was also available for individuals with issues related to Special Educational Needs (SEN), such as legal help for an appeal to the First-tier Tribunal and the Special Educational Needs Tribunals (SEND) for Wales. Legal help and civil representation was also available for appeals from the First-tier Tribunal, to the Upper Tribunal, and Higher Courts. This included advice and advocacy to bring civil law actions for issues such as damages for negligence, and actions for breach of contract in provision of education services.
335. LASPO removed all education law proceedings from the scope of legal aid except for SEN related matters (and discrimination claims, including disability discrimination claims about schools that are heard in the SEND tribunal). The Coalition Government acknowledged the importance of education law matters to individuals and families of those involved, but in comparison to cases where someone's life or liberty is at stake they were deemed less of a priority in a time of significant financial constraints.
336. It is mandatory to access legal services for SEN matters through the CLA telephone service. Face to face legal advice is available, but only after the individual has been referred through the telephone service, and is delivered by a CLA specialist advisor (or an agent acting on their behalf).⁹¹ Civil representation can still be provided as a face to face service, although the advice can also be delivered remotely. The CLA specialist telephone service is discussed in more detail at page 119.
337. Legal help can also still be accessed for discrimination proceedings related to education matters. Some of these cases are categorised under the Discrimination or Education categories, depending on the nature of the case. Civil representation for judicial reviews also remains available, which education providers can undertake as well as public law providers.

⁹¹ Clients can be referred to face to face advice if the client has been deprived of their liberty, the client is under 18 years of age, or the gateway determines that the case is not suitable for advice by telephone.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

338. The changes to legal aid scope for education law has not resulted in a reduction in legal aid expenditure as legal help expenditure has increased.
339. This contrasts with the IA which estimated that legal help expenditure would reduce by 32%. Spending was expected to fall by less than the associated volumes because the proceedings remaining in scope (SEN cases) are more expensive than the typical proceedings that were removed from scope.
340. It was estimated that expenditure on civil representation would reduce by 50%. Again, spend was expected to fall by more than the associated volumes because the proceedings removed from scope (negligence) are more expensive than other education issues. Negligence cases accounted for a quarter of certificates in the IA baseline year, and on average were around twice as expensive as other certificates.
341. Spend on legal help has risen because of the increase in the average cost of cases provided through the CLA telephone helpline. Spend on civil representation has declined proportionally with case volumes. The IA estimated that spend would fall more than volumes, due to a fall in negligence cases.

Figure 31: Comparison of Education IA Estimates and Actual Change between 2012-13 and 2016-17

Level of Service	Spend Change		
	IA %	Actual %	Actual change
Legal Help	-32%	+19%	+£0.5m
Civil Representation	-50%	-85%	-£0.5m

342. Legal help expenditure has increased, but this is offset by the reduction in civil representation expenditure. As such, legal aid expenditure for education law has not, to date, seen a reduction in spend.

Discouraging unnecessary and adversarial litigation at public expense

343. The purpose of this reform was not to discourage unnecessary and adversarial litigation at public expense but instead ensure legal aid was available in the highest priority cases (see next objective).

Targeting legal aid at those who need it most

344. The scope change has successfully targeted legal aid at those who were deemed a priority, as SEN cases now constitute 70% of legal help cases within the education category.
345. The IA estimated that legal help volumes would reduce by 58% and civil representation would reduce by 29%, following the scope changes. However, the trends seen following LASPO differ from those estimated by the IA. Legal help volumes fell by 36% between 2012-13 and 2017-18, which is less than the 58% estimated in the IA. As with many other categories of law, legal help volumes

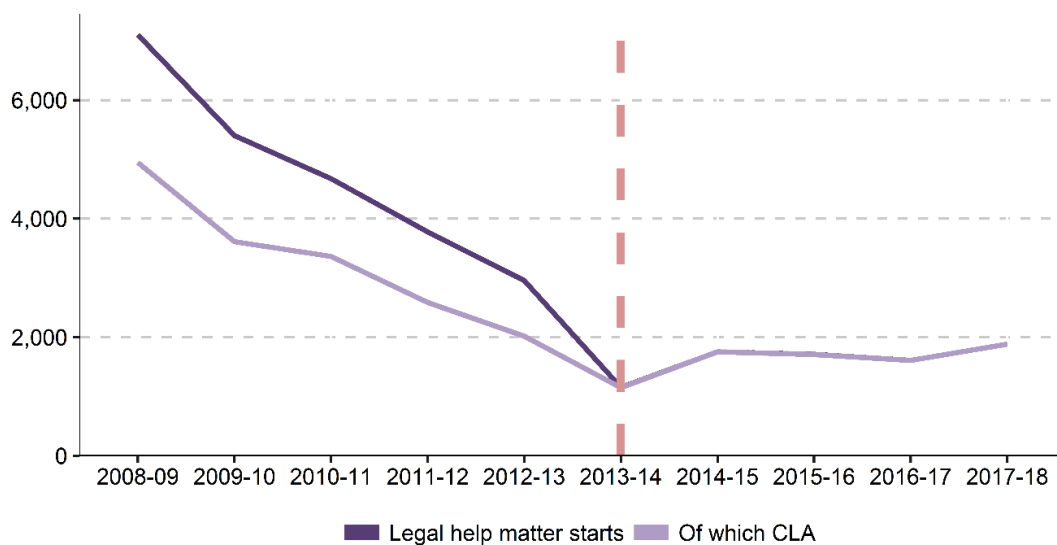
declined prior to the LASPO. The year of LASPO’s implementation saw around a 60% drop in volumes and subsequent years saw a slight increase in volumes which appears to have stabilised at roughly 60% of pre-LASPO levels.

Figure 32: Comparison of Education IA Estimates and Actual Change between 2012-13 and 2016-17

Level of Service	Volume Change		
	IA %	Actual %	Actual change
Legal Help	-58%	-36%	-1,100
Civil Representation	-29%	-78%	-110

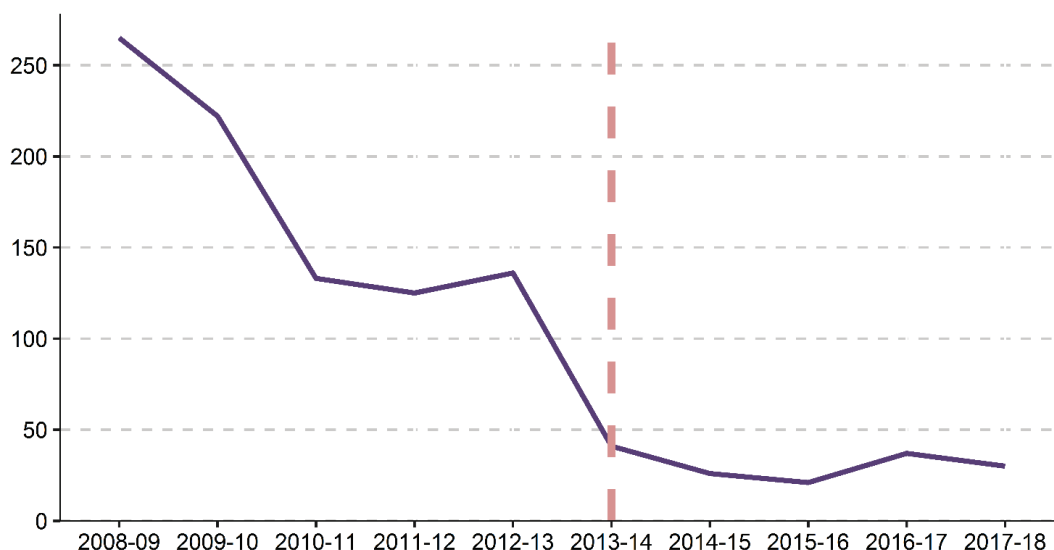
346. Figure 33 shows that the volumes of legal help were declining prior to LASPO and a large proportion of education law matter starts were already conducted (optionally) through the CLA telephone service. The key reason for the fall in calls to the triage service is thought to be the decline in marketing of the service. This was previously done through national engagement with partnership organisations and by contract managers at a local level. The loss of the CLA website (with subsequent reduction in hits to the relevant Gov.uk pages) and leaflets may have further reduced awareness of the service. Therefore, the need to improve public awareness of where legal aid and support are available is important to ensure legal aid is targeted at those who need it most.

Figure 33: Volume (legal help matter starts) to 2017-18



347. As Figure 34 shows, civil representation case volumes have declined more than estimated in the IA following the implementation of LASPO.

Figure 34: Volume (civil representation certificates granted) 2008-09 to 2017-18



348. The case-mix for legal help in education matters shows an almost complete shift towards SEN and/or children unable to attend school cases (70%). This is displayed in Figure 35.

Figure 35: Legal help case-mix changes for Education

Matter type	Volumes			Case-mix	
	2012-13	2017-18	Change	2012-13	2017-18
Special educational needs and/or children unable to attend school	1,100	1,000	-5%	34%	70%
Other	540	270	-49%	17%	18%
Concern over level or quality of education, bullying or other professional negligence	470	10	-99%	15%	0%
Admission/choice of an institution (non-SEN and non-DDA)	400	<5	-99%	13%	0%
Exclusion/refusal to provide full time education (non-SEN and non-DDA)	370	10	-97%	12%	1%
Disability discrimination at nursery, school, college or LEA	100	140	+43%	3%	9%
Other categories	230	10	-94%	7%	1%

349. The case mix of civil representation certificates is split between judicial review proceedings and appeals at the Upper Tribunal level. Judicial reviews have remained the most frequent case type from 2012-13 to 2017-18.

Figure 36: Civil representation case-mix changes for Education

Proceeding type	Volumes			Case-mix	
	2012-13	2017-18	Change	2012-13	2017-18
Judicial Review	100	20	-81%	71%	60%
Upper Tribunal Appeal	20	10	-37%	14%	40%
Discrimination	10	0	-100%	7%	0%
Negligence	10	0	-100%	5%	0%
Other small categories	<5	0	-100%	3%	0%

350. The focus on SEN cases suggests that this policy has been successful in targeting legal aid towards its desired cohort of cases.

Client equalities

351. The volume of clients accessing face to face legal help in this area of law is too small to draw conclusions regarding the demographics of those still accessing legal aid. In 2017-18, 46% of clients were white (with 23% not reported), there were more women (77%), a fairly even spread of age groups and 16% declared a disability, with 24% unknown.

352. For civil representation, the volume of civil representation cases has dropped, so comparisons are difficult. The proportion of clients aged under 18 has fallen, from 57% in 2012-13 to 50% in 2017-18, although the figure has been fluctuating in between. The proportion of female clients was 44% in 2012-13 and was 40% in 2017-18, although again this has been subject to fluctuation in certain years. It is difficult to draw conclusions regarding ethnicity due to a large proportion of clients having an unreported ethnicity (41% in 2012-13 and 53% in 2017-18). Lastly, in 2013-14 48% of clients declared a disability, with 47% of clients doing so in 2017-18, with a further 29% and 43% not reported respectively. This has also fluctuated in recent years.

Delivering better overall value for money for the taxpayer

353. Using the NAO framework as outlined in the introduction (paragraphs 107-113) and, as outlined above, the scope reductions concerning education law have not achieved economy as spend has increased slightly. However, the policies have successfully targeted legal aid at those deemed most in need – SEN, discrimination and children’s cases. Given this and that the small increase in spend is relatively close to the small initial savings expected, £1m, these policies were effective.

354. A full assessment of the equity and efficiency effects of these policies, on top of economy and effectiveness, is needed to establish whether these policies represent value for money. Unfortunately, this has not been possible due to lack of appropriate data.

355. However, a suggestive indicator is that civil representation has dropped more than expected. It is unclear from the data whether this is due to cases being resolved more efficiently and therefore not reaching the next level of service (and hence representing improved efficiency), or cases going unresolved as a result of not reaching the next level of service (and hence representing an inefficiency). This illustrates the difficulty in assessing efficiency and consequently value for money for this set of policies.

Other themes from the evidence gathering phase

Availability of provision

356. Interested parties such as the ECHR have raised concerns during the PIR process about the mandatory provision of SEN matters through a telephone based system. Concerns were raised regarding the low level of referrals to face to face advice being granted in these proceedings, particularly given that some individuals involved (usually parents of the child with SEN, who are more likely (than the average person) to have SEN issues themselves) may find communicating over the telephone more difficult.
357. When a vulnerable child client requires ‘face to face’ advice the case remains with the telephone service provider who holds the legal aid contract. They are then responsible for finding a non-specialist provider, such as a solicitor at a law centre with knowledge of education law, who can take instructions from the client on behalf of the solicitor. Coram argue that the addition of the face to face provider acting as an intermediary in this fashion slows the process and makes it more confusing and difficult for clients involved.⁹²
358. The CLA telephone gateway is discussed in more detail in at page 119, and in more detail in the Legal Support Action Plan.⁹³

Impact on School Exclusions cases

359. LASPO removed legal help for matters in relation to school exclusion. Several stakeholders raised concerns that the absence of legal aid in this area is having a detrimental impact upon children. Coram have stated that, over a 20-month period ending January 2018, their Child Law Advice Service received 1,704 calls relating to school exclusion. In 25% of calls related to primary school exclusion there was deemed to be a risk that the school had acted unlawfully.⁹⁴
360. Statistics published by the Department for Education (DfE) note that permanent exclusions affect 0.1% of all student enrolments across all state-funded primary, secondary and special schools. 83% of exclusions take place in secondary schools.⁹⁵ While there has been a slight (0.02%) increase in exclusions, there are still fewer exclusions than a decade ago.
361. Regarding those affected by exclusions, a disproportionate number of children affected by a school exclusion have SEN. This figure is estimated at 75-80% by the School Exclusion Project.⁹⁶ Government statistics show that pupils with identified SEN accounted for around half of all permanent exclusions (46.7 per cent) and fixed period exclusions (44.9 per cent). These figures are slightly lower than the

⁹² Coram Children’s Legal Centre (see reference 81)

⁹³ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

⁹⁴ Coram Children’s Legal Centre (see reference 76) p14.

⁹⁵ The data can be found here:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726741/text_exc1617.pdf

⁹⁶ See: <https://schoolexclusionproject.com/how-we-help/>

equivalent figures in 2015/16 when SEN pupils accounted for 49% of all permanent exclusions and 47% of all fixed period exclusions.

362. In March 2018, the Government launched an independent review of exclusions practice, led by Edward Timpson CBE.⁹⁷ The review will consider how schools use exclusion and how this impacts on all pupils, and specifically why some groups of children, such as those with SEN, are more likely to be excluded from school. The review is examining a range of issues, data and evidence, such as the trends in exclusions for different groups of children, different areas, and different schools, and what the drivers for these differences are. The review is identifying effective practice, which will be shared across the system.
363. Although legal aid remains available for appeals regarding the assessment of SEN children, it is not available for other educational issues for those with SEN. The volume of receipts at the SEND Tribunal have increased from 3,384 in 2010-11 to 5,039 in 2017-18.

⁹⁷ The terms of reference for the review can be found here:
<https://www.gov.uk/government/publications/school-exclusions-review-terms-of-reference>.
The Government will respond to this review when it is published in early 2019.

Social Welfare Law

Policy Summary

364. When this review refers to social welfare law, it includes employment, debt, welfare benefits, and housing. During the evidence gathering phase, a number of people and organisations reported that these areas can often be interrelated for an individual and having a problem in one area can often lead to problems in several others. For this reason, this review considers these areas of law collectively.
365. Reductions to the scope of legal aid for social welfare issues were made on the basis that legal aid funding should be targeted at the highest priority cases, where an individual's safety or liberty was at stake.
366. The Coalition Government considered that a variety of alternative support options were available for individuals experiencing social welfare problems. The Coalition Government highlighted the availability of support from organisations such as Citizens Advice, Shelter, and local authorities, as well as the fact that in certain causes which sought damages, funding could be sought through a CFA.

How did LASPO alter the scope of legal aid for social welfare law?

Housing

367. Housing is a broad category which includes all matters to do with enforcing the right to buy, tenant/landlord disputes (including disrepair), eviction proceedings, homelessness and the threat of homelessness, re-housing issues, housing benefit, and some matters in relation to anti-social behaviour orders.
368. Following LASPO, most housing cases which did not involve homelessness, disrepair or possession were removed from the scope of legal aid. Legal aid remained available for cases where there is a risk of homelessness, repossessions or eviction, as well as housing disrepair that risks serious harm to an individual and his/her family.

Debt

369. Prior to LASPO, legal aid was available for advice and assistance in relation to a variety of debt issues. This included advice in relation to bank loans, credit cards, rent, mortgage, council tax, utilities, overdrafts, hire purchase, bankruptcy and court fines. It also covered representation on actions to recover monies due by or owing against the opponent.
370. LASPO removed most areas of debt law from the scope of the scheme. Following the LASPO reforms legal aid remains available via the CLA gateway for three main areas:
- i. proceedings where, as a result of mortgage arrears, the client's home is at immediate risk of possession (which was previously included in the Housing category);
 - ii. proceedings regarding orders for the sale of the home; and
 - iii. bankruptcy proceedings initiated by creditors where the potential bankrupt estate includes the home of the potential bankrupt or his/her family.

Welfare Benefits

371. Prior to LASPO, legal aid provision covered advice and assistance on issues associated with the receipt of, and entitlement to, welfare benefits. Issues could include challenging a benefit decision, for example where someone has been refused a certain benefit or given a value they disagree with, benefit fraud and overpayments. Advice (but not advocacy) was provided for proceedings before the First-Tier Tribunal (Social Entitlement Chamber) and for appeals to the Upper Tribunal.
372. LASPO removed all welfare benefit proceedings from the scope of legal aid for advice and assistance, except for:
- i. legal help for appeals to the Upper Tribunal and Higher Courts, when the case involves a point of law;⁹⁸ and
 - ii. civil representation for appeals relating to council tax reduction schemes, which replaced council tax benefit under the Welfare Reform Act 2012.
373. As with other categories of law, civil representation is available for matters relating to a judicial review of a welfare benefits decision and cases relating to contravention of the Equalities Act 2010.

Employment

374. Before LASPO, legal help was provided for a range of employment law issues, and civil representation was available for appeals to the Employment Appeal Tribunal (but not claims submitted to the Employment Tribunal). The types of issues covered by legal aid included unfair and wrongful dismissals, redundancy, employment contract issues, discrimination at work, maternity and paternity rights and wages.
375. LASPO removed all employment cases from scope, except those concerning discrimination and victims of trafficking and modern slavery. Discrimination cases were recorded by the LAA under the newly created 'discrimination' category post-LASPO, whilst victims of trafficking matters fell under Miscellaneous Work.
376. The Coalition Government considered that other forms of advice and support were available to resolve employment issues. Legal support and assistance could also be sought, for example, through Trades Unions or a resolution could be reached through free arbitration from the Advisory, Conciliation and Arbitration Service.

⁹⁸ Civil representation would also be in scope – general scheme of LASPO Part 1 Schedule 1 of specific exclusions for advocacy under Part 3.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

377. Taken together, the changes made to the scope of legal aid for social welfare law matters have delivered a significant saving to the cost of the scheme, in many areas exceeding the estimations made in the IA.

Housing

378. Figure 37 shows that significant savings have been made by the changes to the scope of legal aid for housing cases.

379. Legal help spend fell by 48% between 2012-13 and 2017-18, falling from £20m to £9m. This fall is broadly in line with the decline in legal help volumes. However, spend has not reduced as much as volumes due to the average case cost increasing over the period.

380. Expenditure on civil representation in housing cases fell by 41% between 2012-13 and 2017-18, going from £25m to £15m. This fall was proportionate with the fall in volumes, both of which were three times greater than estimated in the IA.

Figure 37: Summary spend on Housing between 2012-13 and 2017-18

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£20m	£9m	-48%
Civil Representation	£25m	£15m	-41%

Debt

381. Figure 38 shows that significant financial savings have been made by the changes to the scope of legal aid for debt cases. The IA estimated that expenditure on legal help in this category would reduce by 75% and civil representation spend would reduce by 13%. The actual reduction in legal aid expenditure exceeded this estimate, because the decline in case volumes was greater than expected.

382. Legal help expenditure is estimated to have fallen by more than 99% between 2012-13 and 2017-18, falling from £15m to less than £0.25m. Civil representation estimated spend reduced by 84%, falling from £1m to less than £0.25m.⁹⁹

Figure 38: Summary legal aid spend for Debt

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£15m	<£0.25m	-100%
Civil Representation	£1m	<£0.25m	-85%

⁹⁹ Note that because debt volumes are very small average closed case spend has been used instead of the methodology used for the other categories of law.

Welfare Benefits

383. Figure 39 summarises legal aid expenditure on welfare benefits matters. Significant savings have been made by the changes to the scope of legal aid for welfare benefit cases. The IA estimated a legal help saving of £25m per annum, but in practice the 99% reduction in legal help cases has led to a reduction in legal aid expenditure of around £15m per annum, because of the pre-LASPO decline in volumes (as described at the start of the chapter). Whilst expenditure has dropped for civil representation too, expenditure is so small that it hasn't made a significant saving.

Figure 39: Summary legal aid spend for Welfare benefits

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£15m	<£0.25m	-99%
Civil Representation	<£0.25m	<£0.25m	-50%

Employment

384. Figure 40 sets out the change in spend for employment cases following LASPO. Following the changes implemented through LASPO, estimated spend on both legal help and representation for these cases has reduced to almost zero. The reduction in spend on legal help of around £5m between 2012-13 and 2017-18 is in line with the estimates in the IA.

Figure 40: Spend summary for Employment

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£5m	<£0.25m	-100%
Civil Representation	<£0.25m	£0m	-100%

Discouraging unnecessary and adversarial litigation at public expense

385. The purpose of this reform was not to discourage unnecessary and adversarial litigation at public expense but instead to ensure legal aid was available in the highest priority cases (see next objective).

Targeting legal aid at those who need it most

386. The scope changes across social welfare were designed to target legal aid at the highest priority cases. The volumes of legal aid have declined more than anticipated in all areas. This could be due to a lack of awareness of the availability of legal aid, the clustering of problems, or other factors. These are considered below.

387. Figure 41 shows the estimates in the IA regarding the various areas of social welfare law.

Figure 41: Social Welfare Scope Changes in the IA

Area of Law	Level of Service	Change in case volumes	Proportion of cases	Change in Spend	Proportion of spend
Debt	Legal Help	-105,000	74%	£20m	75%
	Civil Representation	-50	13%	£0m	13%
Housing	Legal Help	-52,000	40%	£10m	38%
	Civil Representation	-1,200	11%	£3m	12%
Welfare Benefits	Legal Help	-135,000	98%	£25m	97%
	Civil Representation	0	0%	£0m	0%
Employment	Legal Help	-24,000	78%	£5m	76%
	Civil Representation	-70	95%	£0.5m	95%

Housing

388. The volumes of legal aid for housing law cases have declined more than anticipated in the original IA.

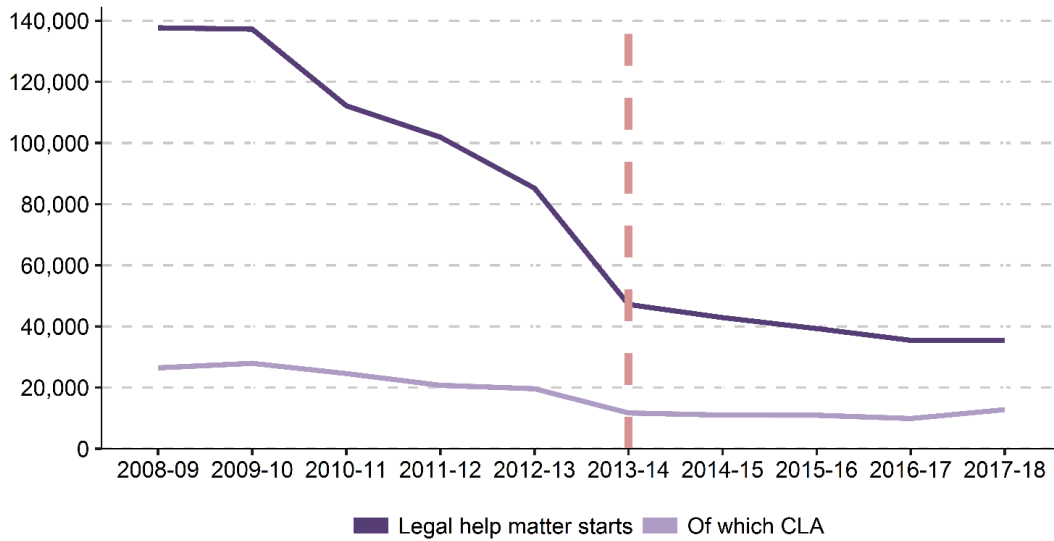
389. Figure 42 shows a summary comparison of the estimates in the IA and the actual change between 2012-13 and 2017-18. Over this period, both legal help and civil representation volumes have declined more than estimated in the IA.

Figure 42: Comparison of Housing IA Estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Reduction		
	IA %	Actual %	Actual change
Legal Help	-40%	-58%	-49,800
Civil Representation	-11%	-36%	-4,400

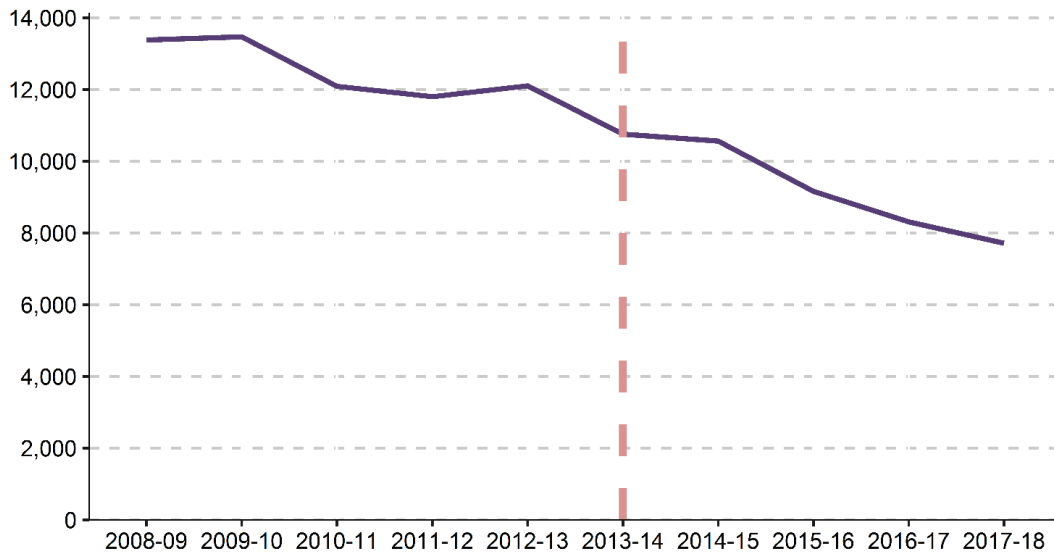
390. Figure 43 shows the declining trend in legal help housing volumes. Volumes have been falling, before and after LASPO’s implementation.

Figure 43: Housing Volumes (legal help matter starts) 2008-09 to 2017-18



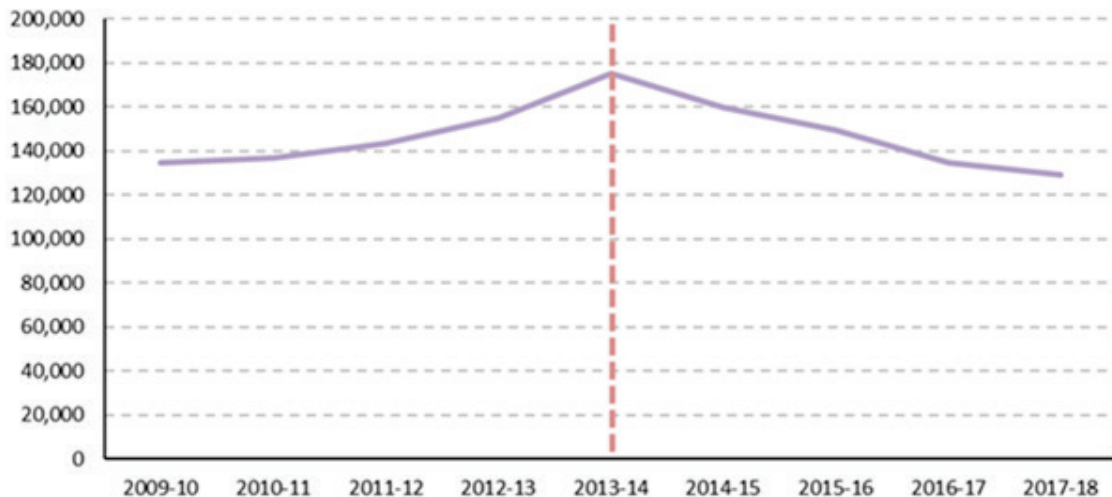
391. Civil representation volumes fell by 36%, between 2012-13 and 2017-18 compared to 11% predicted in the IA. Figure 44 shows this decline: unlike legal help, there was no clear drop in 2013-14 coinciding with LASPO, as cases take time to complete.

Figure 44: Housing Volumes (civil representation granted certificates) 2008-09 to 2017-18



392. It is worth noting the overall volumes for landlord possession claims (not considering legal aid funding) have dropped by 30% since 2012-13, which could be driven by a wide range of factors. This is displayed in Figure 45.

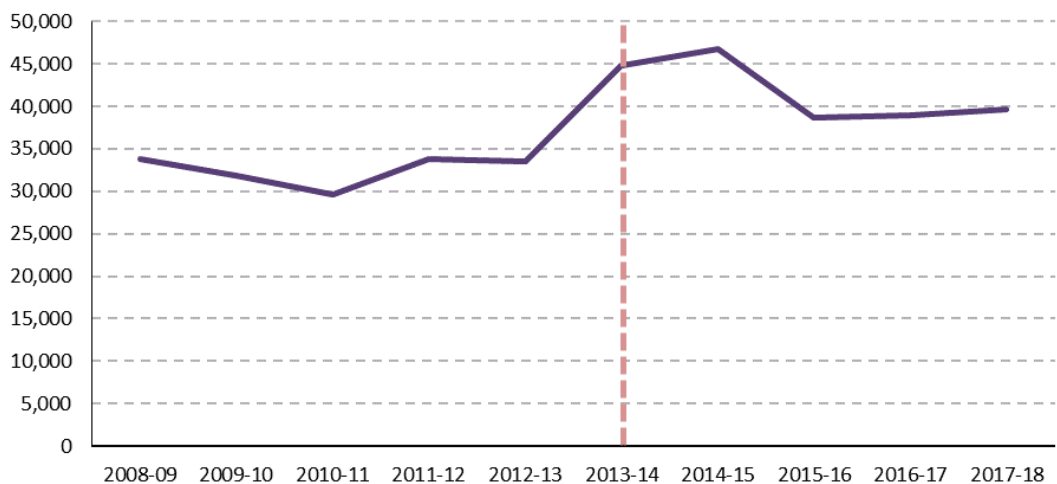
Figure 45: Claims issued for possession actions in the county courts of England and Wales from 2009-10 to 2017-18¹⁰⁰



393. LASPO did not alter the availability of in-court housing advice via the Housing Possession Court Duty Scheme (HPCDS). HPCDS recognises the severity of the situation for individuals facing eviction or housing possession proceedings. Therefore, individuals with the risk of losing their property can access ‘on the day’ advice without being subject to means or merits tests.
394. Figure 46 shows that demand for the HPCDS have risen since LASPO, with an 18% rise in volumes between 2012-13 and 2017-18. There was also a jump in volumes immediately after the implementation of LASPO. LASPO is likely to have contributed to the rise in demand, because HPCDS provides an alternative source of free legal advice in relation to housing.
395. There are other factors, unrelated to the LASPO reforms, which have contributed to the increase in demand. For example, the LAA inherited sole ownership of the housing duty schemes from the then Department for Communities and Local Government. As such, legal aid is still available at the latter end of the process, so that support is provided in court. Early intervention is discussed in more detail below at paragraph 407.

¹⁰⁰ Source: <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-january-to-march-2018>

Figure 46: HPCDS Matter Starts 2009-10 to 2017-18



Debt

396. LASPO sought to target legal aid to those most in need. The decline in the volume of debt cases is greater than was anticipated in the original IA. However, this needs to be viewed in the wider context, with the introduction of the mandatory telephone gateway and the declining volumes of debt cases more generally. Whilst the volumes and expenditure here includes those cases that receive specialist advice over the telephone, the mandatory telephone gateway is discussed in more detail later on in this chapter (see page 119).

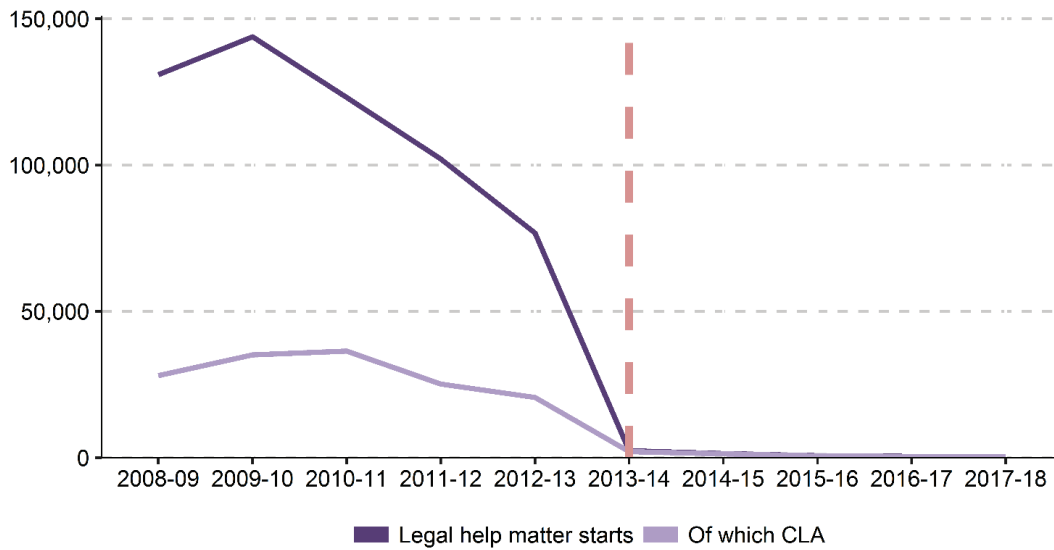
397. Figure 47 shows legal help volumes reduced by 99% between 2012-13 and 2017-18, exceeding the 74% reduction that was predicted in the IA. Of the 430 matter starts in 2017-18, 84% of these were delivered through the specialist telephone advice service.

Figure 47: Comparison of Debt IA Estimates and Actual Change between 2012-13 and 2016-17

Level of Service	Volume Change		
	IA %	Actual %	Actual change
Legal Help	-74%	-99%	-76,300
Civil Representation	-13%	-80%	-150

398. Figure 48 shows the drop in legal help case volumes following LASPO. The IA estimated that legal help volumes would reduce by 74%. This was based on the fact that ‘non-priority debts’ (bank loans, credit card/other regulated credit debts), which constituted half of the legal help matters pre-LASPO, would be completely removed from scope. The remaining matters, comprising issues involving priority debts (rent, mortgage, council tax, utilities, court fines) or court advocacy assistance, was expected to halve.

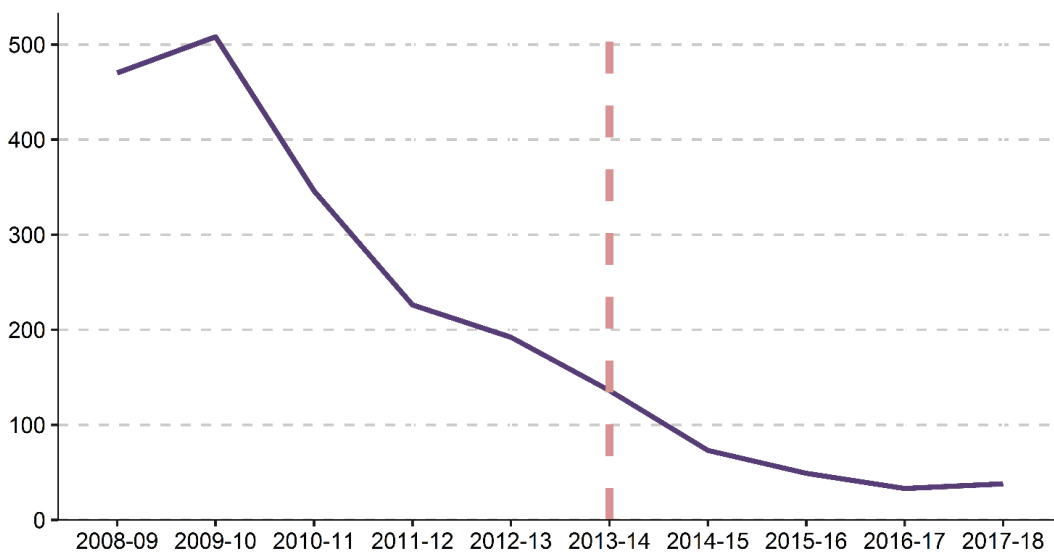
Figure 48: Debt Volumes (legal help matter starts) 2008-09 to 2017-18



399. Civil representation volumes fell by 80% between 2012-13 and 2017-18, more than the 13% that the IA predicted, with certificate grants falling from 190 to 40. However, as Figure 50 shows, this fall was gradual over the whole period, without a sharp fall at LASPO’s implementation.

400. Almost all the civil representation proceedings since LASPO have been ‘recover possession under legal charge.’¹⁰¹ This remained in scope because it involves a client potentially losing their home.

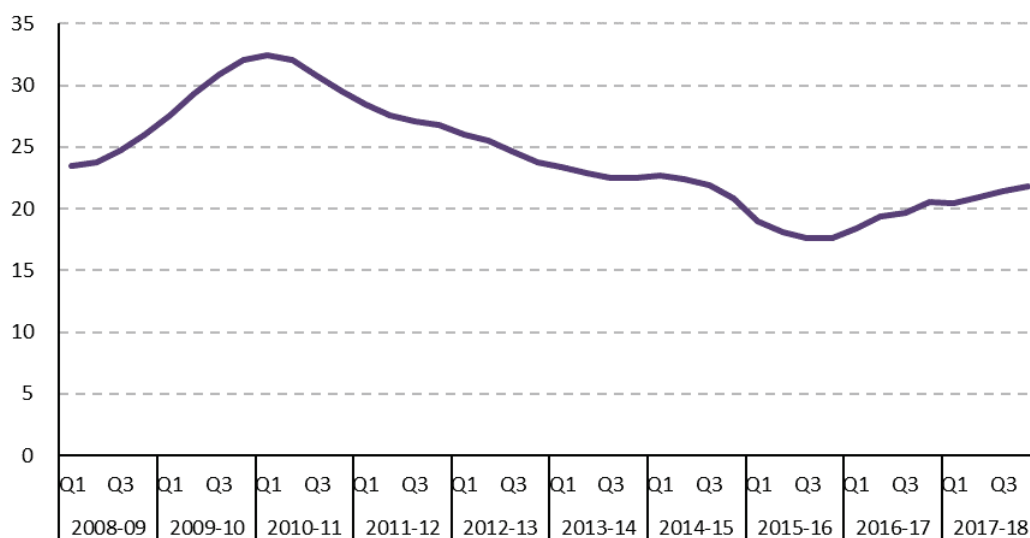
Figure 49: Debt Volumes (civil representation granted certificates) 2008-09 to 2017-18



¹⁰¹ A legal charge is the claim a lender has over a property in the event of a debt default.

401. As Figures 48 and 49 show there was a pre-LASPO decline in legally aided debt matters from 2009-10, which is likely to mean that the reductions we have seen since 2012-13 cannot be fully attributed to the LASPO reforms. The same downward trend of reducing volumes from 2009-10 onwards. trend can also be seen in the fall in insolvency proceedings for individuals in England and Wales over the same period (see Figure 50). From a peak in 2010-11, the volume of individual insolvency proceedings fell by 40% to a low in 2015-16, although it has risen in subsequent years. Other factors are also likely to have affected the demand for legally aided services, including, for example, the state of the economy. This demonstrates the complexity involved in seeking the evaluate the impact of the LASPO changes while adjusting for other external factors that also affect demand for legal aid.

Figure 50: Individual insolvency rate in England and Wales (rate per 10,000 adults) – 2008-09 to 2017-18



Welfare Benefits

402. The scope changes have been success at targeting legal aid away from welfare benefit cases. Some stakeholders have asserted in the evidence gathering phase that by leaving in scope only the most serious cases, this may lead to an escalation of problems. This has been discussed in more detail below at paragraph 435.

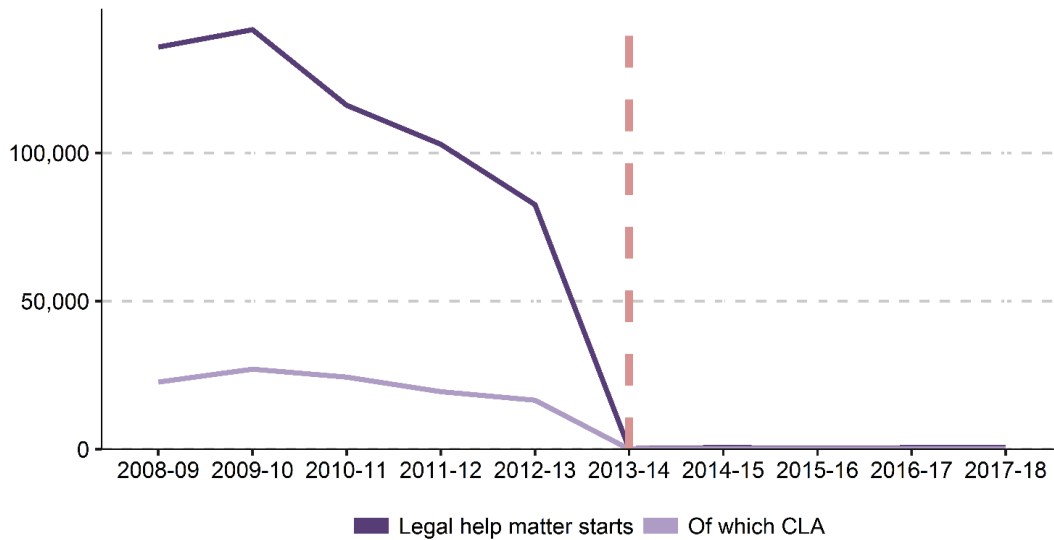
403. As Figure 51 shows, legal help volumes have declined as expected. Civil representation has also declined, but as funding for representation was not widely available for welfare benefits cases prior to LASPO, the 40% reduction only represents 10 cases.

Figure 51: Comparison of Welfare Benefits IA Estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Change		
	IA %	Actual %	Actual change
Legal Help	-98%	-99%	-82,100
Civil Representation	0%	-40%	-10

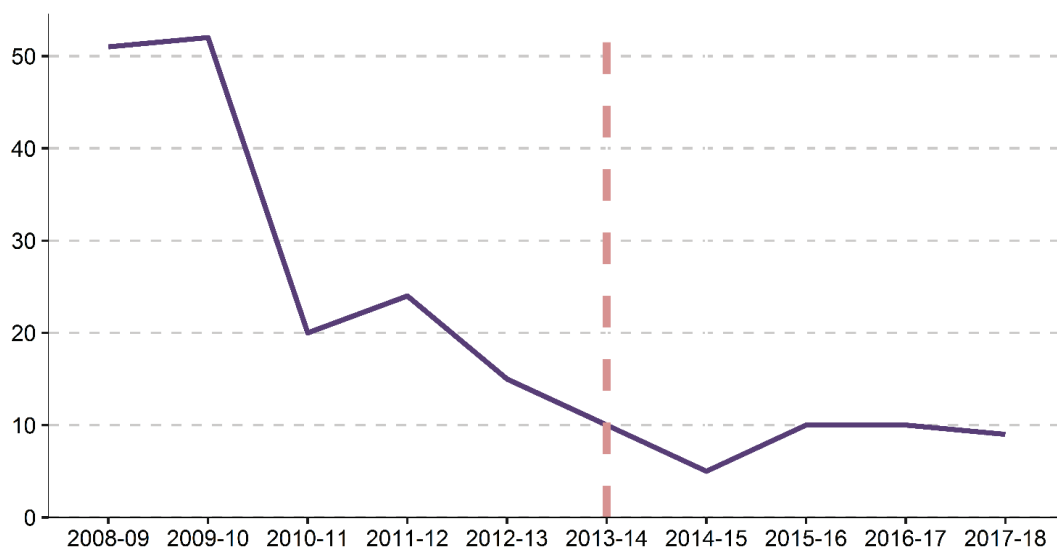
404. As anticipated, the volume of legal help matter starts reduced following LASPO, with a reduction of 99% between 2012-13 and 2017-18, broadly close to the expected reduction of 98% in the IA. Figure 52 shows this graphically.

Figure 52: Welfare Benefits Volumes (legal help matter starts) 2008-09 to 2017-18



405. The volume of civil representation certificates granted also fell, despite the expectation that they would remain stable. Figure 53 shows the small numbers of certificates involved, but between 2012-13 and 2017-18 there was a 40% reduction in certificate grants, going from 15 grants to 10 grants in those years.

Figure 53: Welfare Benefits Volume (civil representation granted certificates) 2008-09 to 2017-18



Employment

406. Figure 54 demonstrates that the volume of legal help matter starts for employment proceedings declined to almost zero between 2013-14 and 2017-18. This is the

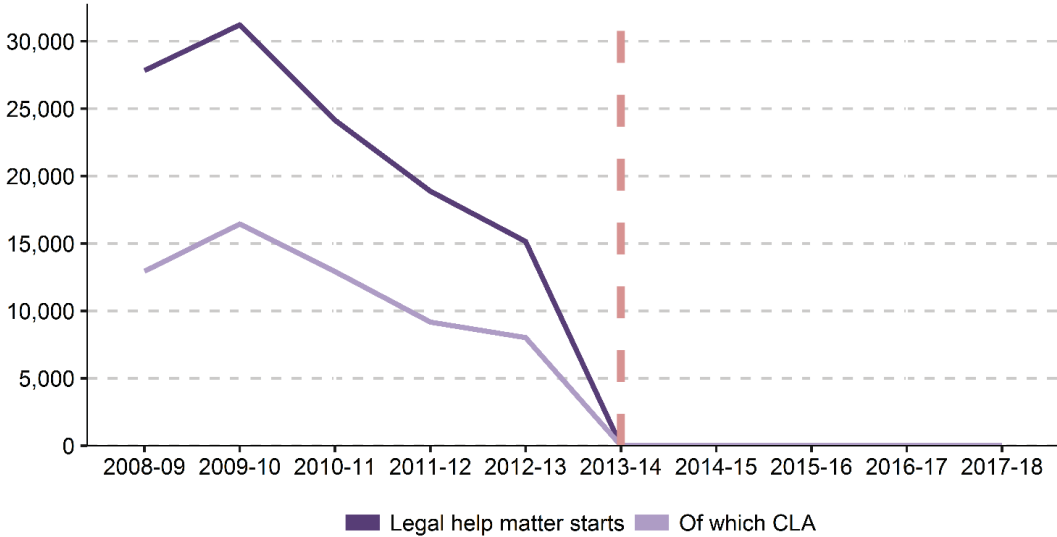
result of the removal of proceedings from scope and the remaining cases being collected in the new, discrimination category.

Figure 54: Comparison of Employment IA Estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Change		
	IA %	Actual %	Actual change
Legal Help	-78%	-100%	-15,100
Civil Representation	-95%	-100%	-60

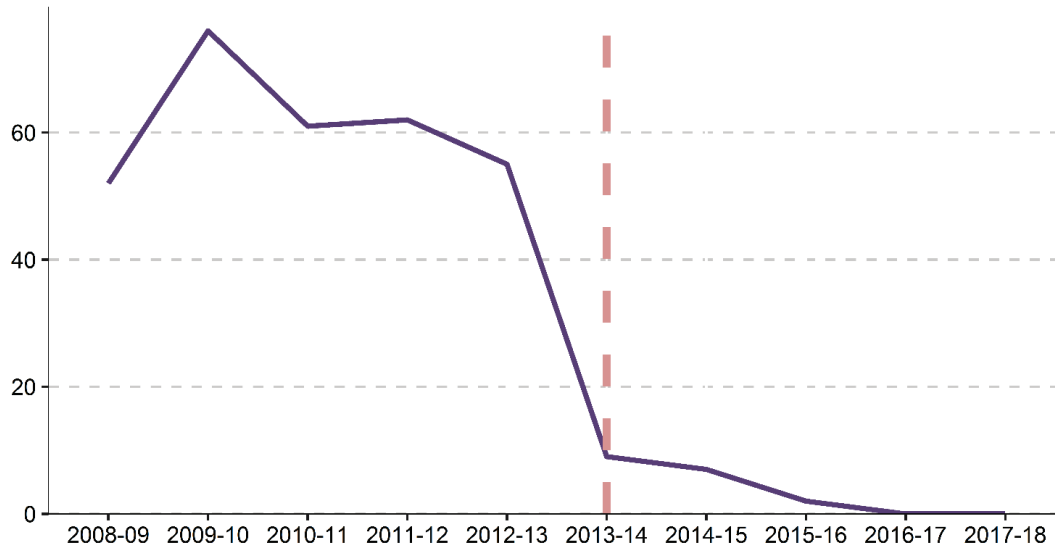
- 407. Figure 55 shows that the volumes of legal help matter starts for employment cases started to decline between 2009-10 and 2012-13. Following LASPO, the number of new cases almost ceased entirely. The fall in legal help volumes was nearly 100% compared to 2017-18, falling from 15,200 matter starts to 10. In the five years since LASPO there have been a total of 30 matter starts.
- 408. Although legal help volumes have fallen to almost zero, any employment discrimination issues (including equal pay, and maternity/pregnancy issues) are now categorised under discrimination or (for victims of trafficking) miscellaneous work in the LAA’s published statistics. For example, in 2017-18 there were 760 matters closed for employment issues in discrimination issues. If the employment category and the relevant portion of discrimination are taken together then the reduction in volumes of cases between 2012-13 and 2017-18 was 95%.

Figure 55: Employment Volumes (legal help matter starts) 2008-09 to 2017-18



- 409. Figure 56 shows that civil representation volumes for employment issues also experienced a sharp drop with the implementation of LASPO. Civil representation volumes fell by 100%, going from 60 certificates granted to 0. In the five full years since LASPO there have been a total of 20 certificates granted.

Figure 56: Employment Volumes (civil representation granted certificates) 2008-09 to 2017-18



Client equalities - Employment

- 410. The volume of clients accessing legal help in this area of law is too small to draw conclusions on the demographic of those still accessing legal aid. Previously, in 2012-13, 69% of clients were white (with 11% not reported), with slightly more men (51%), a fairly even spread of age groups and 16% declaring a disability (with 11% not reported).
- 411. For civil representation, the volume of clients being represented via legal aid is again too low to make comparisons.

Client equalities - Debt

- 412. The volume of clients accessing face to face legal help in this area of law is too small to draw conclusions regarding the demographic of those still accessing legal aid. Previously, in 2012-13, clients were mostly white 81% (with 5% not reported), with slightly more female clients (58%), a fairly even spread of age groups and 33% registered a disability, with a further 6% unknown.
- 413. For civil representation, it must be noted that the volume of civil representation cases has dropped to a point where making comparisons can be difficult. A smaller proportion of clients are now under 34 with 14% in 2012-13 and 3% in 2017-18. The proportion of female clients have increased, from 47% in 2012-13 to 66% in 2017-18. In 2017-18, 74% of clients were white, with 23% of clients from an ethnic minority background. This is an increase in the proportion of white clients from pre-LASPO years, which may be because of the declining proportion of clients not reported. In 2012-13, 53% of clients were white, and 21% were from ethnic minorities. Lastly, the proportion of clients who have declared a disability has decreased from 34% in 2012-13 (with 17% not reported) to 26% in 2017-18 (with 0% not reported).

Client equalities - Welfare benefits

414. Looking at LAA client diversity data, there is an even split in the 2017-18 data between male and female clients, which is unchanged from 2012-13. In terms of age, the 25-35 band has reduced from 14% of clients in 2012-13 to 9% in 2017-18, while the 55-64 band has increased from 20% to 25% of clients over the same period, reflecting a general increase in the age of clients in this category of law. The proportion of white clients was 73% in 2012-13 (with 9% not reported), and this fell to 58% in 2017-18 (with 13% not reported). Lastly, 74% of clients reported a disability in 2012-13, with 80% in 2017-18 (with 6% and 4% respectively not reported).
415. For civil representation, the volumes are too low (pre- and post-LASPO) to make a comparison, as they can be easily skewed year-on-year.

Client equalities - Housing

416. Looking at LAA client diversity data for legal help, the proportion of clients from ethnic minorities has broadly remained the same since 2012-13, with 61% white and 16% of clients with ethnicity not reported. The distribution of the age and gender of the clients has remained broadly the same, with 60% being female clients in 2017-18. Lastly, the proportion of clients with a disability has increased to 43% in 2017-18 from 32% in 2012-13 (with 12% and 14% not reported respectively).
417. For civil representation, the age distribution of clients remains fairly steady. The proportion of female clients was 57% in 2012-13 and 60% in 2017-18. The proportion of clients from an ethnic minority background has also increased, from 28% in 2012-13 to 34% in 2017-18, although the fall in clients not reported from 22% to 12% over the same period could explain this trend. The proportion of clients declaring a disability has increased, from 35% in 2012-13 to 48% in 2017-18, although this could again be attributable to the declining volume of clients without data reported (falling from 21% to 7% over the same period).

Delivering better overall value for money for the taxpayer

418. Spend on social welfare matters has fallen by a total of £60m per annum from 2012-13 to 2017-18. As set out earlier in this review, not all of these reductions can be attributed to the legal aid scope changes made by LASPO. The trend in insolvency proceedings and mortgage and landlord possession proceedings were also falling before and during the review period. These trends may well be associated with the economic recovery from the 2008 financial crisis and these factors are likely to have contributed to the fall in demand of legal aid.
419. Spend reduction estimates have exceeded what was anticipated in the IA. The provision of legal aid has been reduced to only being available to the group deemed most in need, although in some cases case volume reductions have been higher than anticipated. This could in part be due to a number of factors, such as the fall in demand generally as a result of financial recovery (noted above) and the shift to alternative services such as telephone advice and HPCDS. Due to the uncertainties involved, it is difficult to make a conclusion regarding the effectiveness of the social welfare law scope changes.
420. It has not been possible to undertake a robust assessment of equity and efficiency. There are a number of factors which make assessing this difficult, for example the

reductions in civil representation might be due to a more efficient use of telephone advice and alternative services. Conversely, it could represent a failure to capture cases at earlier stages. The rise in HPCDS cases may suggest this is the case and represents an inefficiency.

421. Ultimately, isolating the impact of LASPO against a multitude of other variables across Government and wider society is complex, hindered by the lack of clear and reliable data. Factors such as the escalation and clustering of problems, the individual's ability to self-represent and the availability of provision have been discussed below. However, the Government recognises that determining the extent to which LASPO changes represented overall value for money for the taxpayer is important, and to do this we must obtain a better understanding of this purported cost transference. We will be continuing our work with colleagues across Government to improve our collected data on this issue to inform our assessment of this.

Other themes from the evidence gathering phase

Availability of provision

422. During the evidence gathering phase there was concern about the inability to find a provider for social welfare law cases, even where the cases are in scope. This was particularly prevalent in the housing sector.
423. Representative bodies who were engaged during the review process raised concerns regarding the availability of housing providers in particular parts of the country. For instance, Shelter Cymru reported that there was a shortage of providers in North Wales, and they were struggling to recruit new providers. They, amongst others, are concerned that certain areas across the country are 'advice deserts' and that people living in these regions are consequently having to travel long distances to access support.
424. The Housing Law Practitioners Association (HLPAs) has raised concerns regarding the availability of legal aid for housing disrepair cases where there is a serious risk of harm. The HLPAs assert that this is leading to inconsistencies in decision making, due to differing interpretation of the definition of 'serious risk of harm'. As a result, providers are being denied payment for cases where the extent of disrepair is deemed not to meet the 'serious' threshold. They argued that this creates a disincentive for housing law practitioners to conduct this type of work, and tenants are being left without a legal resolution.¹⁰² The Lord Chancellor's guidance states that the main focus of the "serious risk of harm" test is when applying for legal representation, and that legal help can be used to investigate the case in the first instance. There is also the right of appeal to an Independent Costs Assessor (likely to be a housing practitioner) if a legal help claim is disallowed.
425. The LAA data suggests that the number of providers completing legally aided housing cases has reduced by 39% since 2012-13. However, there is large variation in effects depending on region of the country. The Eastern, South West and South regions have had the largest percentage decrease in the number of providers doing housing work, as shown in Figure 57.

¹⁰² Housing Law Practitioners Association. 2018. Evidence submission to this review. See p7: <http://www.hlpas.org.uk/cms/2018/10/hlpas-response-to-laspo-review/> LASPO review evidence submission

Figure 57: Number of providers completing housing work by region, pre- and post-LASPO

	Number of providers completing housing work in 2012-13	Number of providers completing housing work in 2017-18	Percentage change ¹⁰³
East Midlands	47	37	-21%
Eastern	74	20	-73%
London	307	240	-22%
Merseyside	26	18	-31%
North East	56	30	-46%
North West	78	47	-40%
South	41	18	-56%
South East	44	22	-50%
South West	62	20	-68%
Wales	56	35	-38%
West Midlands	50	24	-52%
Yorkshire and Humberside	67	40	-40%
Total	908	551	-39%

426. To explore whether this has had an impact on the number of areas with providers based in the local authority area, we have looked at the change in the number of local authorities in each region that have providers completing housing work (Figure 58). The Eastern region has had the largest increase in the number of local authorities with no providers completing housing work, followed by the South and South West. While this analysis indicates that there are limitations in the universal provision of face to face housing advice, it does not account for the potential level of demand in each region or population size.

¹⁰³ Note that the percentage change reflects the precise figures and not the rounded figures in the table.

Figure 58: Changes in the number of providers per local authority in each region completing housing work – 2012-13 vs 2017-18

	Number of local authorities with providers completing housing work in 2012-13	Number of local authorities with providers completing housing work in 2017-18	Change between 2012-13 and 2017-18	Total number of local authorities in the area ¹⁰⁴
East Midlands	20	21	1	40
Eastern	33	13	-20	47
London	33	32	-1	33
Merseyside	5	5	0	NA
North East	12	11	-1	12
North West	28	19	-9	39
South	20	10	-10	NA
South East	24	16	-8	67
South West	22	12	-10	37
Wales	21	21	0	22
West Midlands	18	12	-6	30
Yorkshire and Humberside	16	15	-1	21
Total	252	187	-65	348

427. Whilst this table suggests that there are more areas in which no housing work has been completed in recent years, these changes may not be wholly attributable to LASPO. There may be other market forces that impact the number of providers in an area, such as changes in funding models and the merging of offices. This is discussed in more detail in the civil and family fees chapter – chapter 3.

428. It is also important to note that not having a provider based within the local authority area does not mean the local population does not have access to legally aided advice. The LAA awards its contracts by local procurement areas which are larger than local authority areas (there are 134 LAA housing procurement areas and over 300 local authority areas), so many providers will work with clients who live in a different local authority area the location of the provider's office is located. The LAA contracts with providers are based on these procurement areas, as there is a risk that awarding contracts in low volume areas may fragment the market and lead to contracts which are too small to sustain.

429. The LAA regularly monitors capacity and takes action where it identifies gaps in services or where demand is greater than the available supply. Where the LAA is unable to secure face to face provision in an affected area, its contract has sufficient flexibility for providers to offer alternative ways to deliver advice, for example, by offering outreach services in conjunction with the delivery of advice through digital methods. Legal advice for housing issues is also available through the CLA telephone services, regardless of geographic location.

¹⁰⁴ These regions are LAA office regions, so do not map perfectly onto official ONS regions.

Ability to self-represent

430. A motivating factor behind the LASPO scope was to remove the areas (including those identified within social welfare law) where it could be reasonably expected that the individual could represent themselves adequately. A theme of the evidence gathering phase was that this has not materialised in practice. For instance, the EHRC raised concerns regarding the ability of users to understand the employment tribunal process without prior legal assistance.¹⁰⁵ The EHRC also raises concerns regarding the ‘inequality of arms’ between the employer and the employee. Its report points to research conducted by the Department of Business, Innovation and Skills (BIS), which reported that in 2015 33% of claimants were represented at employment tribunals compared with over two-thirds of employers.
431. The Government appreciates that litigants in person require more support, to navigate their way through the justice system. However, we do not accept that the justice system cannot function with the increased presence of litigants in person, and access to a lawyer is not always the correct or most affordable answer.
432. To assist litigants in person, we currently provide £1.45m every year to the Litigants in Person Support Strategy, through the Access to Justice Foundation. This collaborative strategy supports litigants in person through the courts and tribunal system in many ways, including by providing support at court through Personal Support Units, and online support through tools like AdviceNow.
433. Through the HMCTS reform programme, the Government is investing over £1bn to build a modern system for administering justice which will benefit everyone who uses it. By designing systems around the public who need and use our services, we can create a more effective system for them and generate efficiencies for the taxpayer.
434. The ability to self-represent, and the support for those that do, is considered further in the Action Plan.¹⁰⁶

Escalation of problems

435. Shelter have argued that the scope changes to housing have led to an increasingly crisis-driven approach to housing advice in general. They believe that where legal aid remains available under LASPO, it is often provided at too late a stage to prevent homelessness occurring as people’s legal problems have escalated beyond the point of prevention.¹⁰⁷ They have estimated that there was a potential cost of £18,688 to local authorities for the period of time between when a household is placed in temporary accommodation until the point at which they leave. This figure was determined based on the average cost of temporary accommodation and the average length of stay.¹⁰⁸ Statistics from the Ministry of Housing, Communities and

¹⁰⁵ Equality and Human Rights Commission (see reference 51). See p32.

¹⁰⁶ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

¹⁰⁷ Shelter. 2018. *Evidence submission to this review*. p3.

¹⁰⁸ Ibid

Local Government (MHCLG) indicate that instances of statutory homelessness have been increasing gradually since 2009.¹⁰⁹

436. The HLPAs highlighted the absence of legal help for individuals to challenge a welfare benefits decision as a particular cause of problem escalation.¹¹⁰ The restriction of early legal advice limits the potential for early problem resolution and can lead to an escalation of the welfare benefits issue and the development of further legal problems as a result.
437. The escalation of legal problems can also be seen to have impacted upon individuals experiencing employment issues. Research conducted by the EHRC stated that individuals with employment issues frequently reported an escalation of their issue, sometimes to the point of dismissal, due to an inability to reach a resolution.¹¹¹ In a number of instances this then led to the individuals claiming welfare benefits, and the development of a clustering of related problems.
438. Clustering of problems can also go beyond social welfare law. Mavis Maclean, an academic focusing on family law, suggests that “*clusters of problems pre-date any search for help... So early legal advice is most effective.*”¹¹²
439. The Law Society, amongst others, has asserted that the removal of legal help for large areas of social welfare law has led to problems frequently escalating.¹¹³ They have said, ‘lack of early legal advice can cause relatively minor problems to escalate, creating health, social and financial problems, and put pressure on public services. To use an example, in housing law legal aid is still available to defend possession proceedings – but only where loss of a home is imminent. Free, and early, legal advice could address the issue before getting to this stage.’
440. The Law Commission’s report on the Future of Advice and Legal Support addresses six main principles, one of which is “*early intervention, and action rather than allowing problems to escalate*”. The report states firmly that “*the cutbacks in legal aid for social welfare law and the simultaneous reductions in local authority funding of advice and legal support have destabilised and reduced the advice and legal support sector at a time of increased need. As a result, instead of saving money, the cutbacks are very likely to end up costing more elsewhere in the system.*”¹¹⁴

¹⁰⁹ Statutory homelessness covers all households who are owed a homelessness duty by a local authority. A household is considered statutorily homeless if a local authority decides that they do not have a legal right to occupy accommodation that is accessible, physically available and which would be reasonable for the household to continue to live in. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721285/Statutory_Homelessness_and_Prevention_and_Relief_Statistical_Release_Jan_to_Mar_2018_-_REVISED.pdf

¹¹⁰ Housing Law Practitioners Association (see reference 102)

¹¹¹ Equality and Human Rights Commission (see reference 51) p29.

¹¹² Mavis Maclean and John Eekelaar. 2018. *After the Act: Accessing Family Justice After LASPO.*

¹¹³ Law Society. 2018. *Research on the benefits of early professional legal advice.* See: <https://www.lawsociety.org.uk/support-services/research-trends/research-on-the-benefits-of-early-professional-legal-advice/>

¹¹⁴ Law Commission (see reference 57) p6.

441. Research conducted by Citizens Advice has also indicated that the scope changes have the potential to shift costs to other Government funded services. They estimate that for every £1 spent on advice for housing, debt, employment and welfare benefits could save between £2.34 and £8.80 of public spending elsewhere.¹¹⁵ While this figure can be regarded as an estimate based upon several assumptions in spend and circumstance, the hypothesis of downstream cost savings requires further investigation. The principle of downstream cost savings has been advocated by several interested parties who participated in the review engagement process.
442. However, given the number of different factors driving homelessness (such as local authority behaviour), it is difficult to quantify the impact that LASPO has had on these figures. For instance, the definition for ‘threatened with homelessness’ has changed, and legal advice can now be accessed if homelessness is possible in the next 56 days, rather than 28 days. This has naturally impacted on the availability of legal advice, and is an example of other drivers operating in the same space.
443. Many have raised the importance of early intervention and the argument requires further consideration. Due to the difficulties involved in following the long-term benefits of early advice, there is limited comprehensive research as to what works best, when, and for whom. Further, whilst it is often suggested that early intervention leads to cost savings, the financial and economic benefits of early advice are difficult to quantify with accuracy. As such, whilst it is widely asserted that early advice is paramount, more research is required to appreciate how this advice should best be delivered.
444. This is considered further in the Action Plan.¹¹⁶

Clustering of problems

445. Individual’s frequently experience a number of different legal problems simultaneously. This is often referred to as problem clustering. The Legal Problem and Resolution Survey reported that half of adults (50%) who had experienced at least one legal problem covered by the survey in the last 18 months had experienced more than one problem in the period (20% reported experiencing two problems, 9% reported three problems, and 22% four or more problems).¹¹⁷ Studies such as ‘Causes of Action: Civil Law and Social Justice’ by Professor Pascoe Pleasence and others further outline the relationship an individual has with the justice system.¹¹⁸
446. Amnesty International argued in its Cuts That Hurt report that “*people frequently experience legal issues in clusters reflecting the inter-connected nature of social problems. However, following the introduction of LASPO organisations reported that they were often only able to assist in relation to one or two aspects of a person’s*

¹¹⁵ Citizens Advice. 2010. *Towards a business case for legal aid*. See p2: https://www.accesstojusticeactiongroup.co.uk/wp-content/uploads/2011/07/towards_a_business_case_for_legal_aid.pdf

¹¹⁶ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

¹¹⁷ Ministry of Justice. 2017. *Legal problem and resolution survey 2014 to 2015*. See: <https://www.gov.uk/government/publications/legal-problem-and-resolution-survey-2014-to-2015>

¹¹⁸ Pascoe Pleasence and others. 2004. *Causes of Action: Civil Law and Social Justice*. See: <https://www.rchss.sinica.edu.tw/cibs/law/3.%20Survey/papers/Others/Causes%20of%20Action-%20Civil%20Law%20and%20Social%20Justice%20.pdf>

*problem. This in turn can mean they are unable to address the underlying and fundamental cause of the problem.*¹¹⁹ Stakeholders are also reporting an increase in the complexity of the legal matters that clients are presenting with. 63% of Law Works Clinics co-ordinators reported an increase in the complexity of legal matters they dealt with, 52% said they are seeing clients presenting at a later stage in their problem, and 61% have witnessed an increase in the number of clients with multiple problems or problem clusters.¹²⁰

447. It is argued, by organisations such as the Civil Justice Council, that by removing various areas of social welfare law from the scope of legal aid providers cannot offer holistic advice to a client with a cluster of problems. Due to a lack of funding, providers now can only help individual parts of the legal problem. As a result, clusters of legal problems either fail to be identified, and so individuals repeatedly return to this point, or go untreated, and consequently escalate into large problems.
448. The Legal Education Foundation argues that LASPO led to a simultaneous surge in demand for advice with a reduction in the capacity of the advice sector to meet that demand. They view housing, debt, welfare and employment as core justifiable issues implicated in the cause of destitution.¹²¹ Their report states that the negative consequences of the reduction in the scope of legal aid have been exacerbated by the lack of information on the availability of legal aid. They suggest a public campaign to combat the widespread impression that legal aid is almost non-existent.
449. Prior to LASPO the LSC ran Community Legal Advice Centres (CLAC) and Community Legal Advice Networks (CLAN) to provide easily accessible face to face services (both early advice and legal representation) to address the combinations of problems people experience. These were halted when LASPO was introduced, as a significant amount of work they undertook is no longer within the scope of legal aid.
450. Many have raised the importance of clustering of problems and the argument requires further consideration. As with the benefit of early intervention in attempting to prevent problem escalation, there are difficulties involved in following the long-term benefits of early advice. There are some examples of innovative methods of tackling problem clusters and as such more research is required to develop the case for the most effective solution.
451. Stakeholders suggested the Government should consider embedding legal advice in other services – ‘place based legal services’ – noting that ‘one stop shops’ can be very effective, user friendly, and would support those with clustered problems. The Low Commission research was noted which articulated ‘advice on Prescription’, the idea of GPs prescribing advice rather than medicine). The Government wants to assess and collect more evidence about the value of the co-location of support services for the benefit of the individual.

¹¹⁹ Amnesty International (see reference 52) p22.

¹²⁰ Law Works Clinics. 2017. *Law Works Clinics Network Report April 2016 – March 2017*. See p22: <https://www.lawworks.org.uk/about-us/news/lawworks-clinics-network-report-april-2016-march-2017>

¹²¹ Legal Education Foundation. 2018. *Destitution and Paths to Justice*. See p47: <https://www.thelegaleducationfoundation.org/articles/new-research-published-destitution-and-paths-to-justice>

452. The Ministry of Justice takes seriously concerns raised during the consultation process. It wants to explore these issues further so that individuals can access the most efficient support. These issues and others raised via our stakeholder engagement are considered further below, alongside the Government's response to them, and in the Action Plan¹²².

¹²² See: <https://www.gov.uk/government/publications/legal-support-action-plan>

Consumer Law

Policy Summary:

453. Prior to LASPO, legal aid provision in this category related to the bringing of civil law actions regarding contracts and their enforcement, in cases such as breach of contract, fraud, personal data issues, consumer credit issues or professional negligence (except medical negligence).
454. Following LASPO, all proceedings related to consumer matters were taken out of scope of legal aid, both for early advice and assistance as well as for representation at court. However, it is possible for these proceedings to fall under the Equality Act 2010 and could appear in the discrimination category.
455. The Coalition Government justified these changes on the basis that individuals were thought to be able to represent themselves, as well as the relatively low importance of issues, the alternative sources of funding (e.g. CFAs), the availability of alternative routes to resolution (e.g. Financial Ombudsman Service) and the availability of alternative sources of advice (e.g. Trading Standards).

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

456. The changes to the scope of legal aid for consumer law appear successful in meeting this objective, reducing spend from the legal aid fund by approximately £0.5m per annum, as summarised in Figure 59.

Figure 59: Consumer Law Volumes (civil representation granted certificates) 2008-09 to 2017-18

Level of Service	Spend Change		Actual change
	IA %	Actual %	
Legal Help	-100%	-100%	£0m
Civil Representation	-99%	-100%	-£0.5m

Discouraging unnecessary and adversarial litigation at public expense

457. The purpose of this reform was not to discourage unnecessary and adversarial litigation at public expense but instead to ensure legal aid was available in the highest priority cases (see next objective).

Targeting legal aid at those who need it most

458. For consumer law the scope change was intended to decrease by 99-100%, and this has materialised since LASPO.

459. Figure 60 shows that the IA predicted a complete removal of scope of the consumer category. The civil representation volume change was not 100% reduction because there would be some vulnerable clients expected to be readmitted through the ECF.

Figure 60: Consumer scope changes in the IA

Level of Service	Change in case volumes	Proportion of cases	Change in Spend	Proportion of spend
Legal Help	-3,100	100%	-£0.5m	100%
Civil Representation	-470	99%	-£3m	99%

460. Figure 61 shows a summary comparison of the estimates in the IA and the actual change between the new baseline year of 2012-13 and 2017-18.

Figure 61: Comparison of Consumer IA Estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Change		
	IA %	Actual %	Actual change
Legal Help	-100%	-100%	-340
Civil Representation	-99%	-100%	-120

461. Since the implementation of LASPO, matter starts or grants in this category of law have completely stopped, except for 30 civil representation applications which were

granted after implementation, due to transitional arrangements. For both legal help and civil representation there was a very large fall before the scope changes were implemented. Figures 62 and 63 show this trend.

Figure 62: Consumer Law Volumes (legal help matter starts) 2008-09 to 2017-18

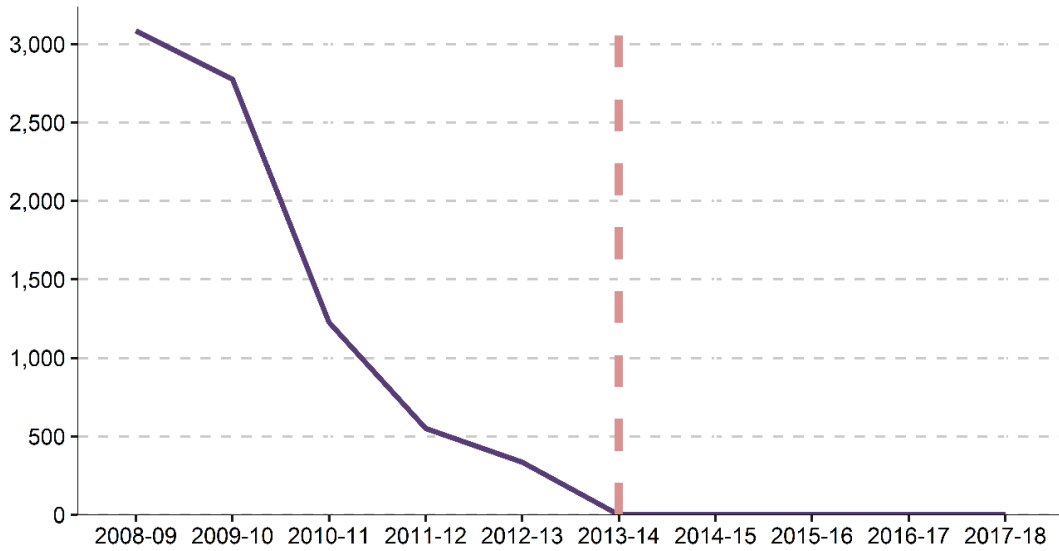
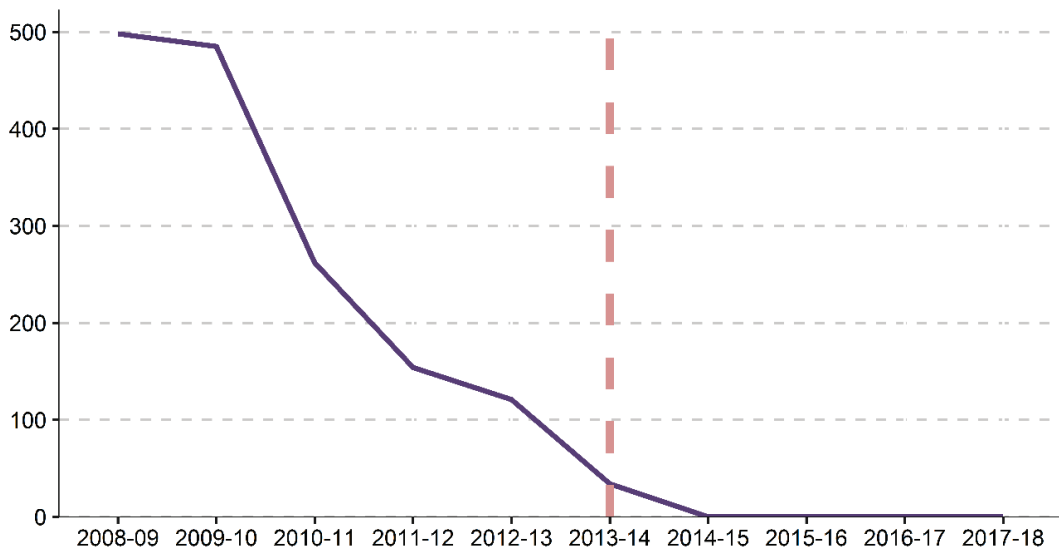


Figure 63: Consumer Law Volumes (civil representation granted certificates) 2008-09 to 2017-18



462. This fall in volumes was to be expected, as this category was abolished as a standalone category when the LASPO scope changes were made. There may be a limited number of cases that have a consumer law aspect, that have been collected in other categories of law.

Client equalities

463. The volume of clients accessing legal help in this area of law is too small to draw conclusions regarding the demographic of those still accessing legal aid. Previously, in 2012-13, 70% of clients were white, with around an even number of male and female clients, a fairly even spread of age groups and around 31% of clients registered a disability (with 20% not reported).
464. For pre-LASPO civil representation, there was a greater proportion of female clients (56%), with 21% from an ethnic minority (with 17% not reported), and 42% of clients reported having a disability (with 20% not reported).

Delivering overall better value for money for the taxpayer

465. These policies have led to reductions in spend to the legal aid fund, in line with that expected initially (once the pre-LASPO decline in case volumes has been accounted for), and as a result have achieved economy. Additionally, as the other aim was to remove consumer law cases entirely from the scope of legal aid, the scope reductions have been effective.
466. As outlined in the introduction (paragraphs 107-113) a full assessment of the equity and efficiency effects of these policies, on top of economy and effectiveness, is needed to establish whether these policies represent value for money. Unfortunately, this has not been possible due to lack of appropriate data.

Public Law

Policy Summary

467. Public Law, as a category of law, concerns challenging public authorities through the means of:
- i. judicial review in the High Court; or
 - ii. any procedure in which a court, tribunal or other person mentioned in Part 3 of Schedule 1 of LASPO is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review.
468. Public Law also covers claims involving the human rights of a client or dependent (other than those falling within another category). This would cover, for example, human rights damages claims (under paragraph 21/22 of LASPO) – provided the case did not fall into the action against the police category (because the relevant public authority did not have the power to prosecute, imprison or detain).
469. LASPO retained public law challenges in scope, apart from certain immigration cases, while adding a requirement for there to be a benefit to the individual, the individual's family or the environment. The Coalition Government believed that public law cases were a priority for legal aid funding, as it is essential that individual citizens can check the exercise of executive power through recourse to the courts, often on issues of the highest importance.
470. The immigration cases excluded from scope were:
- i. judicial reviews on substantially the same issue as a previous judicial review, or a previous appeal which has been unsuccessful within a one-year period prior to bringing the claim; and
 - ii. judicial reviews challenging removal directions except where there has been a delay of more than one year between the determination of the decision to remove a person and the giving of removal directions.
471. These exclusions were identified after the Judges' Council responded to the consultation arguing that there were too many unmeritorious cases being brought where the applicants had already had their cases reviewed several times.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

472. This reform has successfully met this objective. Expenditure on legal aid for public law cases has fallen by approximately £3m per annum, although the savings have been generated from civil representation, rather than legal help (where the IA estimated there would be significant savings).

473. Figure 64 shows that estimated spend in legal help has risen 26%, despite flat volumes. Civil representation spend has fallen proportionally in line with volumes, with a 38% fall in spend compared to a 39% fall in volume.

Figure 64: Summary of spend change for public law

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	£0.5m	£1m	+26%
Civil Representation	£7m	£4m	-38%

Discouraging unnecessary and adversarial litigation at public expense

474. The purpose of this reform was largely to make significant savings to the cost of the scheme (see above) and target legal aid at those who need it most (see below).

Targeting legal aid at those who need it most

475. Public law is an area where the scope change has not completely achieved this objective, because legal help volumes have remained broadly similar. However, volumes for civil representation have fallen by 39%, when the volume was expected to remain fairly static.

476. Public law mainly concerns judicial reviews, however sometimes judicial reviews are categorised under the category of law relevant to the subject matter, e.g. a judicial review concerning community care could come under within the community care category, rather than under public law. The analysis below just covers the public law category, to maintain consistency with the IA's analysis.

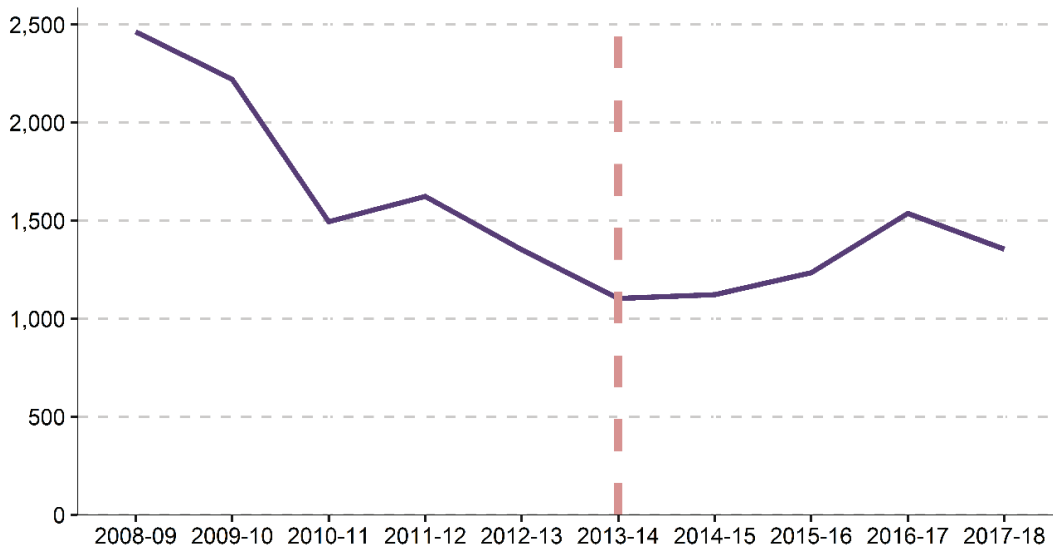
477. The IA anticipated that legal help volumes would reduce by 14%, with an associated reduction in spend of 16%, due to the removal of certain cases from the scope of legal aid. For civil representation, the volumes would reduce by 1%, and spend by 1%. From the 2009-10 baseline used in the IA, this would have been a drop of 240 cases for legal help, and a drop of 10 cases for civil representation. For both levels of service, the reduction in spend was anticipated to be less than £0.1m. This information is shown in figure 65.

Figure 65: Public law scope changes in the IA

Level of Service	Change in case volumes	Proportion of cases	Change in Spend	Proportion of spend
Legal Help	-240	14%	£0m	16%
Civil Representation	-10	1%	£0m	1%

478. Contrary to expectations legal help volumes remained the same between 2012-13 and 2017-18, at around 1,400 matter starts. Figure 66, however, shows that volumes were generally declining before LASPO, and since then volumes rose in 2016-17, before falling back slightly in 2017-18.

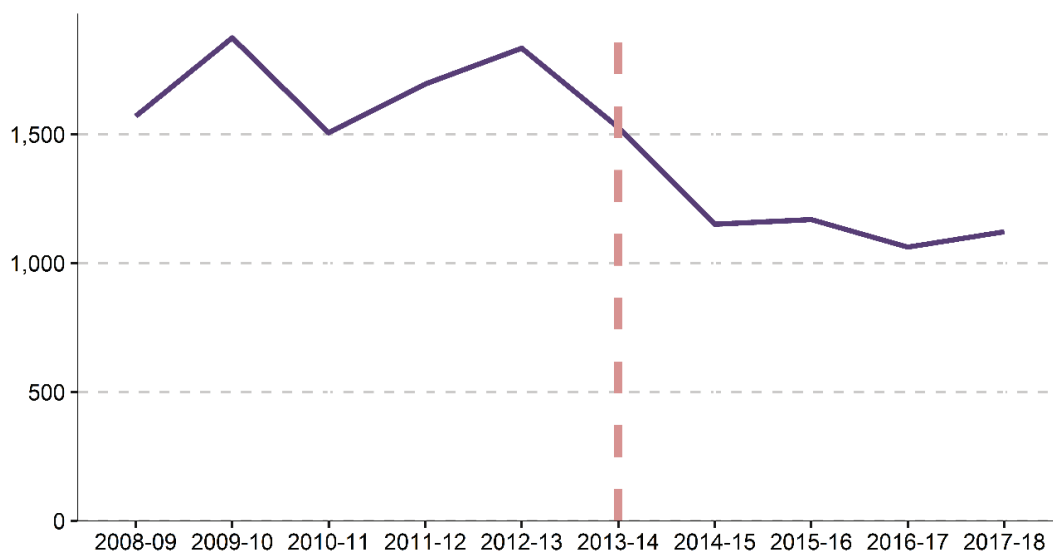
Figure 66: Public Law Volumes (legal help matter starts) 2008-09 to 2017-18



479. For civil representation the volume of cases funded by legal aid has declined by 39%, in comparison to the 1% estimated in the IA. Figure 67 shows this graphically.

480. Since LASPO, over 85% of the civil representation case mix has been for judicial reviews, so the fall in legal aid certificate grants reflects the general fall in judicial review volumes.

Figure 67: Public Law Volumes (civil representation granted certificates) 2008-09 to 2017-18



Client equalities

481. Looking at LAA client diversity data for legal help, the proportion of the respective age categories has remained broadly similar. The proportion of male clients has increased slightly and remains the majority of clients (going from 59% in 2012-13 to 64% in 2017-18). In respect of ethnicity, the large proportion of clients for whom ethnicity is not reported makes it difficult to make conclusions (33% in 2012-13 and 47% in 2017-18), but the proportion of those declaring ethnic minority backgrounds has remained steady at 31% in 2012-13 and 29% in 2017-18. Lastly, the proportion of clients declaring a disability has remained at around a quarter, with a further quarter not reported.
482. For civil representation, the proportion of young clients (under 18) has increased, from 14% in 2012-13 to 23% in 2017-18. The proportion of female clients has increased slightly from 24% in 2012-13, but still remained low at 30% in 2017-18. The proportion of ethnic minority clients has increased, from 22% in 2012-13 to 37% in 2017-18, although there is a high proportion not reported (35% in 2012-13 and 42% in 2017-18). The proportion of clients declaring a disability was 26% in 2012-13 and 29% in 2017-18, with 37% and 23% not reported in the respective years.

Delivering better overall value for money for the taxpayer

483. Following the scope reduction in legal aid for public law, spend in this area has fallen by £3m which is almost a 33% reduction of overall spend at time of implementation. As such, this scope reduction has achieved economy.
484. Civil representation claim expenses were reduced by 38% rather than the expected 1%, legal help rose by 26% rather than the expected 16% fall and volumes of each type diverged similarly from expected. Whilst the scope reductions in public law have likely had some effect on volume, the reduction in civil representation seems to be due largely to external factors driving down judicial reviews (both legally aided and not) more generally (these make up more than 85% of controlled representation cases). As such, it is difficult to isolate the effectiveness of this policy change.
485. As outlined in the introduction (paragraphs 107-113), a full assessment of the equity and efficiency effects of these policies, on top of economy and effectiveness, is needed to establish whether these policies represent value for money. Unfortunately, this has not been possible due to lack of appropriate data.
486. Isolating the impact of LASPO against a multitude of other variables across Government and wider society is complex, hindering the availability of clear and reliable data. However, the Government recognises that determining the extent to which LASPO changes represented overall value for money for the taxpayer is important, and to do this we must obtain a better understanding of this purported cost transference. We will be continuing our work with colleagues across Government to improve our collected data on this issue to inform our assessment of this.

Miscellaneous Scope

Policy Summary

487. Miscellaneous, whilst not a category of law, included a range of other matters not included in the scope of any other category. Matters specifically removed from scope were:
- i. appeals to the Upper Tribunal from the General Regulatory Chamber of the First-tier Tribunal;
 - ii. cash forfeiture actions under the Proceeds of Crime Act 2002;
 - iii. legal advice in relation to a change of name;
 - iv. actions relating to contentious probate or land law;
 - v. court actions concerning personal data;
 - vi. action under section 14 of the Trusts of Land and Appointment of Trustees Act 1996;
 - vii. legal advice on will-making
488. Some matters left in scope, that were classified as miscellaneous work, were:¹²³
- i. confiscation proceedings under the Proceeds of Crime Act 2002, because the litigant's assets would be restrained preventing them from paying for private legal representation;
 - ii. injunctions concerning gang related violence, because an injunction restricts an individual's liberty;
 - iii. Independent Safeguarding Authority Appeals (care standards), because inclusion on a list of individuals who are considered unsuitable to work with children and vulnerable adults could have a significant and lasting impact on the life and the livelihood of an appellant who may have been included on the list in error;
 - iv. Legal Help at Inquests, because of the importance of the issue in these cases (investigating the cause of death of a loved one);¹²⁴
 - v. Civil proceedings under the Protection from Harassment Act 1997, because the litigant's physical safety is potentially at risk (for example, where an ex-defendant seeks to vary or discharge such an order).¹²⁵
489. The Anti-Social Behaviour Crime and Policing Act 2014 (ASBCPA) brought cases which were previously funded under criminal legal aid (Anti-Social Behaviour Orders) into the civil legal aid jurisdiction. As such, these issues are now classified as miscellaneous.

¹²³ This list is not exhaustive, as the miscellaneous category covers all matters not contained in a contract category.

¹²⁴ Cases of this nature can often fall within another category.

¹²⁵ Cases of this nature can often fall within housing or family.

To what extent has the LASPO scope change achieved its original objectives in this area?

Making significant savings to the cost of the scheme

490. Legal aid expenditure for the miscellaneous category has increased, largely due to the change to include ASBCPA injunctions. As such, it cannot be concluded that significant savings to the cost of the scheme have been made since LASPO.
491. Estimated spend in 2012-13 and 2017-18 for the miscellaneous category is shown in Figure 68, however some of the cases will be funded under the Discrimination category. Estimated legal help spend fell by 80% between 2012-13 and 2017-18, but the total saving is lower than £0.25m. This fall was proportionally in line with the volume reduction, and similar to the 82% predicted by the IA.
492. Total civil representation expenditure on the miscellaneous category rose by 121% between 2012-13 and 2017-18, going from £0.5m to £2m. This rise was driven by the 130% rise in volumes. However, the closed case spend per certificate on ASBCPA injunctions has been similar to other proceedings, so removing these is likely to lead to a reduction in spend similar to the 30% reduction in volumes.

Figure 68: Summary of spend change for Miscellaneous

Level of Service	Baseline 2012-13	Current 2017-18	% change
Legal Help	<£0.25m	<£0.25m	-80%
Civil Representation	£0.5m	£2m	+121%

Discouraging unnecessary and adversarial litigation at public expense

493. The purpose of this reform was not to discourage unnecessary and adversarial litigation at public expense but instead ensure legal aid was available in the highest priority cases (see next objective).

Targeting legal aid at those who need it most

494. It is difficult to draw conclusions regarding the miscellaneous category due to the diverse range of matters that are grouped within it, the changes to the categorisation of various matters and the impact of external factors. Legal help is now targeted at a reduced cohort of cases, although the pre-LASPO decline makes it difficult to make direct comparisons. However, the volumes of civil representation have increased, due to the post-LASPO changes discussed below.
495. The IA anticipated that legal help volumes would reduce by 85%, with an associated reduction in spend of 82%. For civil representation, the volumes would reduce by 60%, and spend by 80%.

Figure 69: Miscellaneous scope changes in the IA

Level of Service	Change in case volumes	Proportion of cases	Change in Spend	Proportion of spend
Legal Help	-3,300	85%	-£0.5m	82%
Civil Representation	-580	60%	-£3m	63%

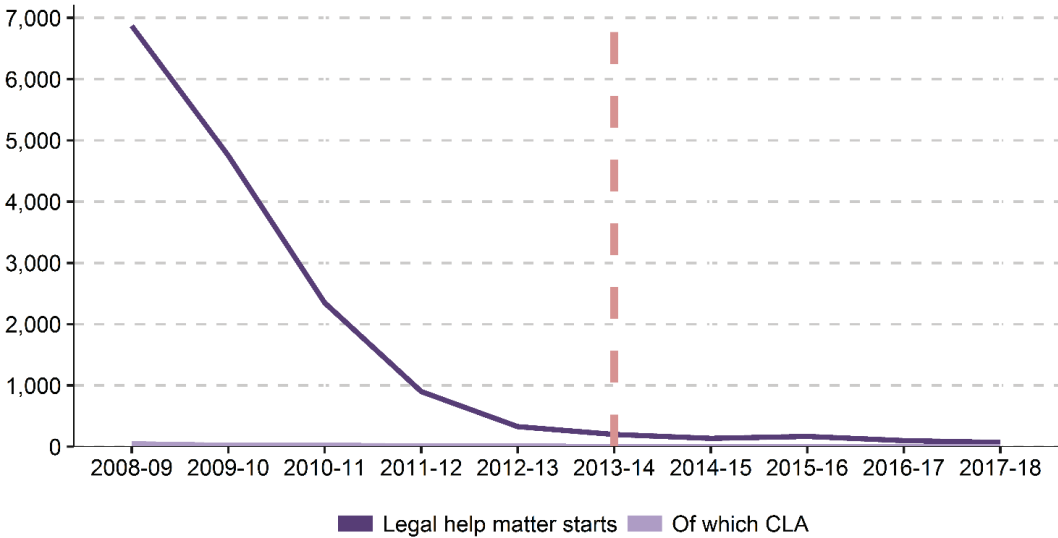
496. Figure 70 shows a summary comparison of the estimates in the IA and the actual change between 2012-13 and 2017-18. However, between LASPO’s IA and implementation there was a fall in volume of 93%. This is so large that comparing the 85% predicted drop to the subsequent fall due to LASPO is very difficult. Although the percentage reduction in volumes between 2012-13 and 2017-18 is less than the IA’s estimate, the number of matter starts after LASPO have been low.

Figure 70: Comparison of miscellaneous law IA Estimates and Actual Change between 2012-13 and 2017-18

Level of Service	Volume Change			Spend Change		
	IA %	Actual %	Actual change	IA %	Actual %	Actual change
Legal Help	-85%	-79%	-260	-82%	-80%	£0m
Civil Representation	-60%	+130%	+400	-63%	+121%	+£1m

497. Figure 71 shows the decrease in volumes which was happening before LASPO. Legal help volumes fell by 79% between 2012-13 and 2017-18, going from 330 matter starts to 70. Prior to LASPO small volumes of advice was being delivered through the CLA helpline (fewer than 100 matters each year), but this stopped after LASPO.

Figure 71: Miscellaneous Law Volumes (legal help matter starts) 2008-09 to 2017-18

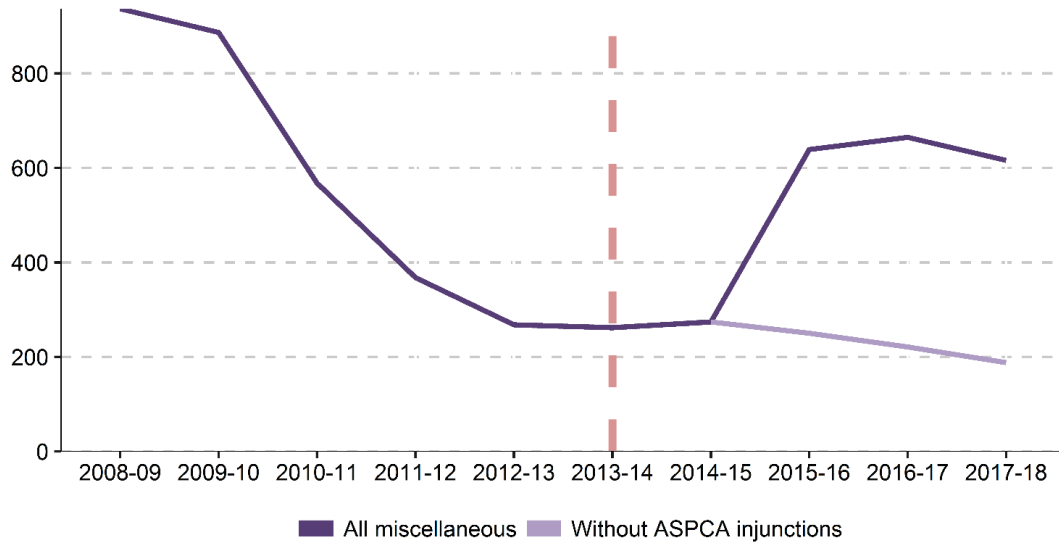


498. Prior to 2012-13 civil representation of the miscellaneous category had seen a similar general decline in volumes experienced by most of the categories. However, Figure 72 shows that civil representation volumes rose after LASPO, because of an increase in volumes in 2015-16. The increase between 2012-13 and 2017-18 was from 270 certificate grants to 620.

499. The rise in 2015-16 and onwards is due to the introduction of part 1 injunctions under the ASBCPA. This represents a transfer of cases from criminal to civil legal aid, rather than a real increase in volumes for legal aid overall. However, the

eligibility criteria for civil representation is different than for criminal, so the volumes may not completely read across.¹²⁶

Figure 72: Miscellaneous Law Volumes (civil representation certificate grants) 2008-09 to 2017-18



500. Figure 72 also shows the volumes without the additional volumes due to the part 1 injunctions. This shows what the volumes would have been if anti-social behaviour cases had not been brought into civil scope. Excluding ASBCPA injunctions, between the baseline year of 2012-13 and 2017-18 volumes fell by 30%. This is still less than the 60% predicted by the IA, however there was a very large fall before LASPO making a direct comparison difficult.

Client equalities

501. The volume of clients accessing legal help in this area of law is too small to draw conclusions regarding the demographic of those still accessing legal aid. Previously, in 2012-13, 68% of clients were white (with 23% not reported), with more female clients (58%), a fairly even spread of age groups and 23% of clients registered a disability (with 30% not reported).

502. For civil representation, the age distribution of clients remains broadly similar. The proportion of female clients has decreased, from 41% in 2012-13 to 35% in 2017-18. With regards to ethnicity, the proportion of clients from ethnic minorities remains at 17%, whilst the proportion of white clients has increased to 70%, with the proportion not reported declining from 24% to 13%. Finally, the proportion of clients declaring a disability has increased from 28% in 2012-13 to 53% in 2017-18, with the declining volume clients not reported (26% in 2012-13 and 10% in 2017-18) potentially responsible for this.

¹²⁶ In terms of cost, the ASBCPA impact assessment noted that: “If less than two thirds of current application and appeal proceedings relating to ASBOs pass the civil means and merits tests then there could be a saving to the legal aid fund”.

Delivering better overall value for money for the benefit of the taxpayer

503. Legal help spend in the miscellaneous category has fallen slightly, although the pre-LASPO expenditure was so small it has not made a significant impact on the legal aid fund. Due to changes in categorisation of certain cases (see above), civil representation expenditure in cases classed as miscellaneous has risen at the same time. This represents a transfer of legal aid funds from criminal to civil proceedings and, as such, is not all an additional cost to the LAA. Nevertheless, given the small overall values involved, it is difficult to conclude that the scope change has achieved overall greater economy.
504. As outlined above, it is difficult to draw conclusions regarding the miscellaneous category due to the diverse range of matters that are grouped within it, as well as the impact of external factors. It is therefore not clear that this policy has achieved the objective of better targeting legal aid at those who need it most, even though legal help volume reductions in areas taken out of scope suggests the policy has been somewhat effective.
505. As outlined in the introduction (paragraphs 107-113), a full assessment of the equity and efficiency effects of these policies, on top of economy and effectiveness, is needed to establish whether these policies represent value for money. Unfortunately, this has not been possible due to lack of appropriate data.

Civil Legal Advice Telephone Gateway

Policy Summary:

506. Prior to LASPO, advice could be received via the Community Legal Aid telephone service, which had been in operation since 2004. LASPO introduced the mandatory CLA telephone gateway for legally aided advice over the telephone in three areas of civil law: debt, discrimination (claims relating to a contravention of the Equality Act 2010), and special educational needs.
507. The CLA was aimed at providing a simple, straightforward telephone service, that would cater to the diverse needs of its users and make the most of advances in technology. The CLA was built to offer tailored additional support to help clients access the service. Examples of this includes interpretation in over 170 languages, British Sign Language via webcam, and text relay/minicom, amongst others.
508. Where face to face advice is considered necessary, or if legal representation is needed, the CLA telephone gateway will refer that client to a face to face provider. If a person using CLA was not eligible for legal aid or the matter was not in scope, it was intended that other legal support services where people could go for information or advice would be signposted to them by the service operator. This may include local or national advice services.
509. Prior to LASPO, clients seeking legal aid for initial advice and assistance (Legal Help) in debt and special educational needs areas could choose to contact a telephone helpline funded by legal aid, which would refer eligible clients to specialist telephone advice; or approach a legal aid provider directly. Discrimination cases previously arose in several civil categories, but mostly in employment. Employment advice was available over the telephone before April 2013.
510. The CLA service consists of two tiers – an operator tier and a specialist tier. When a potential client contacts the service, they are connected to the operator tier, where it is determined if they are likely to be eligible for legal aid. This includes an assessment of whether their case is in scope of legal aid and whether they are likely to be financially eligible. If they are likely to be eligible and their issue is in scope, the client will be forwarded to the specialist tier and will receive telephone advice and assistance for their legal problem (subject to further eligibility testing at this tier of the service).
511. Specialist telephone advice can be provided for a variety of legal matters, such as family or housing problems. LASPO made it mandatory for individuals seeking advice in the areas of debt, discrimination and special educational needs issues to apply for that advice via the CLA telephone gateway first. This is often referred to as 'the mandatory gateway'. Clients with debt, discrimination or special educational needs issues can be exempted from the mandatory gateway in certain circumstances – this will be expanded on further in the chapter.
512. In non-mandatory categories, which are family and housing law, individuals have a choice – they can choose to receive advice over the telephone or with a provider face to face.

513. By introducing the mandatory gateway, the Coalition Government intended that in appropriate circumstances, advice over the telephone would be better value for money than face to face advice.

To what extent has the LASPO changes to the CLA telephone service met LASPO's original objectives?

514. In the following assessment, data from the Operator Service has been extracted from the LAA system as follows: Operator Service cost (in October 2018), referral route data (in May 2018), call length (in April 2018), number of contacts (in April 2018). Data from the specialist telephone advice service aligns with the data for the published statistics (January to March 2018).

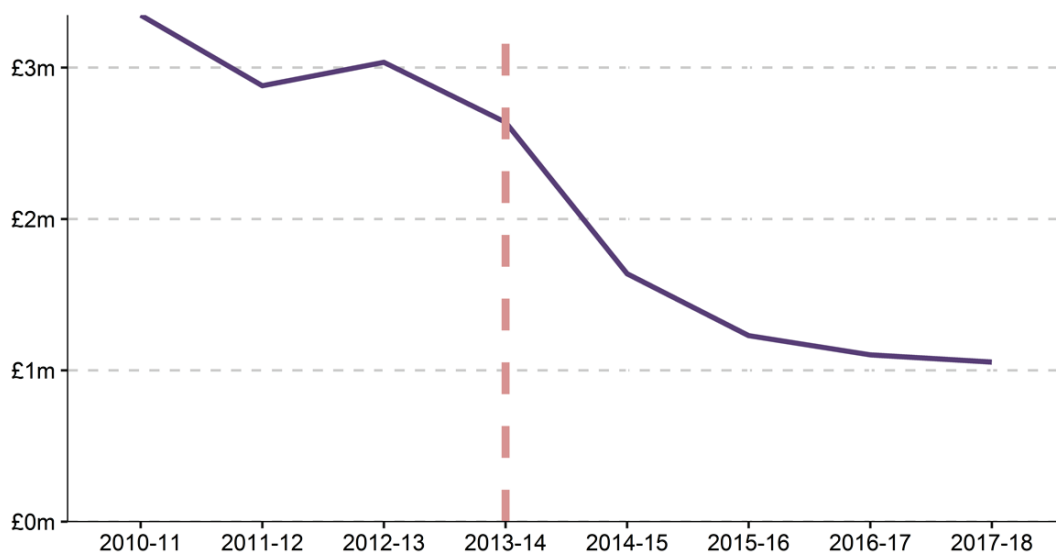
Making significant savings to the cost of the scheme

515. It has not been possible to give a robust estimate of any savings from this policy or whether it has been a cost, as explained below. However, whilst there are now fewer cases passing through the telephone advice line, the average cost per case has increased, and therefore expenditure has balanced out.
516. The savings in the IA were estimated based on the scope changes already happening, and as such are based on much lower volumes than pre-LASPO levels. Therefore, the IA's savings estimates for the changes to the telephone advice service are additional savings to those savings made from the scope changes.
517. The overall monetised annual reduction on spend was estimated to be between £1m – £2m. This figure was arrived at because:
- i. The upper reduction on spend estimate was based on LAA data showing that the cost per case of the telephone service was 50% less than the equivalent face to face service at the time of writing the IA. The lower estimate assumed that the cost per case might only be 30% less if call times became longer because of the mandatory gateway;
 - ii. A certain percentage of issues were expected to continue to be dealt with face to face, having been referred from the telephone service;
 - iii. 30,000 cases were expected to be offered through specialist advice over the phone, instead of face to face. This was because it was assumed that people who were already accessing face to face advice services would, instead, contact the CLA service in those categories of law for which the mandatory gateway would apply;
 - iv. This overall saving includes an additional cost from running the operator service, estimated to be £0.4m annually. It was assumed that cases currently dealt with face to face would generate an average of 1.55 calls to the Operator Service (to reflect the risk of ineligible and repeat calls etc.), and that the average length of a call would increase the cost per call by around 33%.
518. The total estimated one-off costs stated in the IA for establishing the mandatory gateway was said to be £2m. The non-monetised impacts were expected to include:
- i. The requirement to access legal aid services through the CLA Operator Service may result in quicker problem resolution as clients are referred to specialist advice providers on the same day rather than having to wait to see a provider face to face.

- ii. Telephone providers may have limited local knowledge when compared to face to face service provisions.
- iii. Costs to customers may be higher as they must pay to call the CLA Operator Service – the service however offers various ‘call back’ services.
- iv. In many cases there would be a reduced need to travel to face to face services resulting in savings for clients in terms of time and cost. This might be partially offset if clients incur a cost by calling the CLA telephone gateway and remaining face to face clients need to travel further.

519. Figure 73 shows the cost of running the operator service (all costs associated with operating the service). It shows that operating costs are decreasing since the implementation of LASPO. The running costs from the most recent year (2017-18) is almost two thirds less than in the year before the introduction of LASPO, which is consistent with the 60% decrease in volume of calls.

Figure 73: CLA Operator Service Cost for all categories of law (Period: Pre- and Post-LASPO)



520. It was also estimated that cases via specialist phone advice cost 50% less than the equivalent face to face service. For the purposes of the PIR, it is not possible to assess this assertion for the mandatory categories of law, as the number of cases referred to face to face is too low and it is likely that they are not equivalent to telephone advice cases. It is also not possible to say that the delivery method to these cases is the only main difference, as other factors may influence the difference in cost which may arise.

521. Figure 74 shows how closed case spend has changed since LASPO, with the volume for reference. Although Education volumes have decreased, the total cost of

Education cases has increased, indicating that the spend per case is now much higher than it was pre-LASPO.¹²⁷

522. Figure 74 does not distinguish the effect of the scope reductions from the savings arising from giving advice over the phone instead of face to face. It describes the overall change in spend from the gateway in mandatory categories.

Figure 74: Volume and spend changes pre- and post-LASPO for all work done by the specialist telephone advice service in the mandatory categories of law

Category of Law	Volume (2012-13)	Volume (2017-18)	% Volume Change	Spend (2012-13)	Spend (2017-18)	% Spend Change
Debt	22,200	520	-98%	£3m	<£0.25m	-99%
Discrimination	0	4,800	New	£0m	£0.5m	New
Education	2,300	1,600	-29%	£1m	£2m	+129%
Total	24,400	7,000	-72%	£4m	£2m	-38%

523. Figure 74 shows that the education category makes up the majority of the current spend through the gateway, and the costs per case have more than doubled. The average spend on education matters through the CLA telephone service (£1,182 per case in 17-18) is now similar to the average pre-LASPO spend on special educational needs matters delivered face to face in the IA's baseline (£1,171 per case in the IA's 2009-10 baseline). This suggests that any savings on the specialist telephone advice service are lower than expected. However, as it is not known what the 1,600 cases delivered over the phone would have cost by face to face provision, it is not possible to give a robust estimate of any savings from this policy or whether it has been a cost.

Discouraging unnecessary and adversarial litigation at public expense

524. The introduction of the mandatory elements of the CLA telephone gateway were designed at improving efficiency and not aimed at deterring litigation. As such, this objective has not been assessed for this policy.

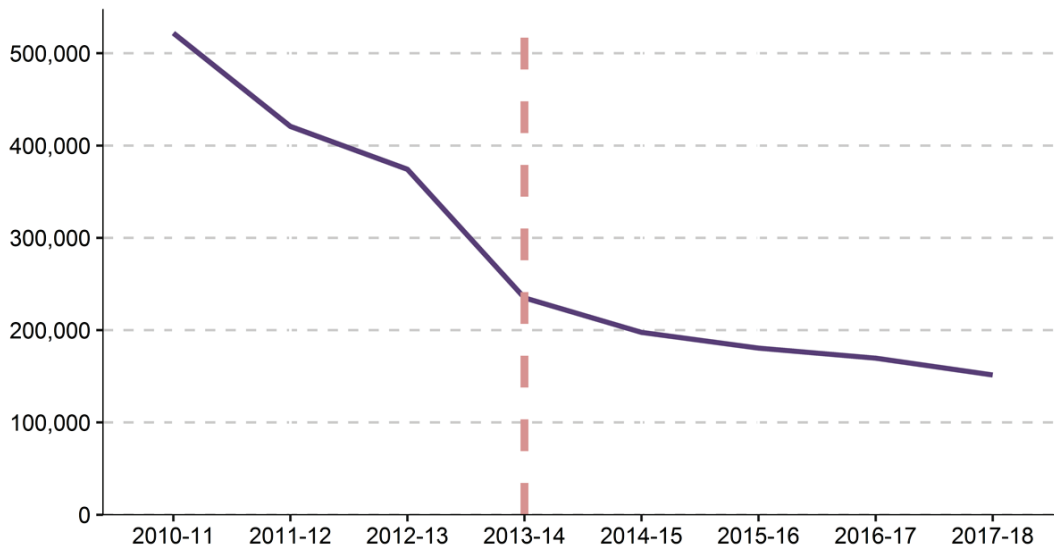
Targeting legal aid at those who need it most

525. The purpose of introducing the mandatory element of the telephone gateway was to ensure that legal aid was being used to deliver advice over the telephone rather than face to face where it is appropriate to do so. In that regard, the policy has achieved this objective. However, such a mechanism only functions successfully if, as described above, there are appropriate referrals to face to face advice where it is necessary. Therefore, whilst legally aided services were available to clients over the telephone, the low referral rates to face to face advice and low usage of specialist advice over the telephone suggests (and only suggests) that the referral process may require further consideration.

¹²⁷ However, as mentioned in the 'Education Law: Scope' chapter of this report, this is partly due to case mix with the more complex cases remaining in scope.

526. The IA suggested that the volume of calls to the CLA telephone service might increase, for example due to anticipated greater public awareness of the service, or resulting from improved perceptions of service quality.
527. However, there has been a lower than anticipated uptake of the scheme, which may have in part been a result of poor awareness of the scheme. Moreover, there is a shortage of use of relevant adjustments for users with a disability and a low number of exclusions where the mandatory element has been waived. Lastly, the shortage of providers in this area raises concerns about the long-term viability of the mandatory element for these areas of law.
528. Figure 75 shows the number of calls arriving at the operator service across all categories of law. The volume of calls has decreased since the implementation of LASPO, continuing the pre-LASPO trend.¹²⁸

Figure 75: Volume of calls at Operator Service for all categories of law



529. The graph shows that between 2012-13 and 2017-18 there was a decrease in volumes of 60%.
530. LAA client diversity data shows that for clients accessing the specialist telephone advice service for debt law 22% were from an ethnic minority in 2010-11¹²⁹ with 5% unknown, compared to 26% in 2017-18 with 37% unknown. Those clients reporting a disability increased from 26% in 2012-13 with 2% unknown, to 33% in 2017-18 with 16% unknown.

¹²⁸ It is not possible to separate operator service data by category of law, therefore all figures referring to the operator service will include data from all categories.

¹²⁹ Between April 2011 and March 2013 the LAA changed the reporting requirements for CLA Specialists. This means that for this period there is no comparable data set for client ethnicity, so 2010-11 is used here as the pre-LASPO year in place of 2012-13.

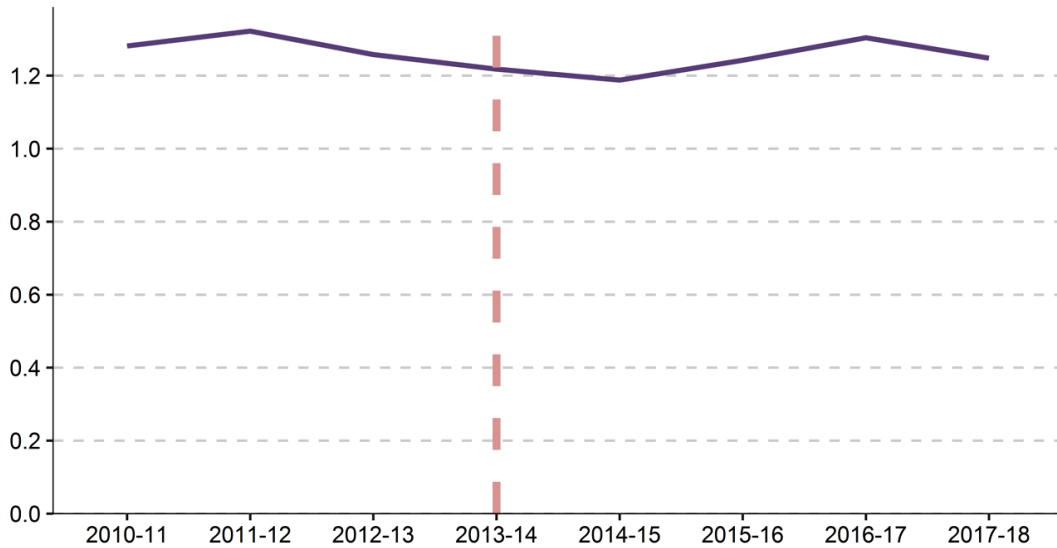
531. For clients accessing the specialist telephone advice service for education law 25% were from an ethnic minority in 2010-11¹³⁰ with 18% unknown, falling to 15% in 2017-18 with 36% unknown. Those clients reporting a disability fell from 26% in 2012-13 with 12% unknown, to 18% in 2017-18 with 14% unknown.
532. For clients accessing the specialist telephone advice service for discrimination law, there is no comparison group in 2012-13 available because the category was newly introduced after LASPO. However, in 2017-18, 34% of clients were from an ethnic minority with 57% unknown, while 40% of discrimination clients reported a disability with 36% unknown.
533. In line with the Government's commitment to publish a review of the operation of the CLA Gateway within two years of implementation, a review was published in 2014 to assess the accessibility and efficacy.¹³¹ The report drew on qualitative and quantitative methods to gauge the perceptions of Service providers, Users, and Operators on the service, as well as to describe uptake and service delivery.
534. It was reported that, although users found their way to the CLA telephone gateway from a range of sources, they felt that awareness of the service and knowledge of what it could provide was low and that it did not have sufficient digital presence. Signposting organisations, who have a significant role in raising the profile of the CLA service and encouraging clients to use it also felt that awareness of the service by their own organisations was low. This was echoed by the Public Law Project (PLP), who surveyed front-line advice agencies in July 2014 and found that 28% of the agencies surveyed said that the reason they had not made any referrals to the telephone service was because they were not aware of it.
535. The IA assumed there would be an increase to 1.55 calls per case at the operator service at the implementation of LASPO. As can be seen from Figure 76, the ratio of calls to cases has remained constant at just over 1.2 calls per case over the whole period from 2010-11 to 2017-18.¹³²

¹³⁰ As for debt law, 2010-11 is used here in place of 2012-13 as the pre-LASPO reference.

¹³¹ See: <https://www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-review>

¹³² Public Law Project. 2015. *Keys to the Gateway*. See: <https://publiclawproject.org.uk/wp-content/uploads/data/resources/199/Keys-to-the-Gateway-An-Independent-Review-of-the-Mandatory-CLA-Gateway.pdf>

Figure 76: Average number of calls per case at the operator service for all categories of law (Period: Pre- and Post-LASPO)



536. A certain percentage of issues were expected to continue to be dealt with face to face, having been referred from the telephone service. These percentages are shown below in Figure 77.

Figure 77: Predicted referrals to specialist telephone advice and face to face advice in the IA

Category of Law	% Referred to Specialist Telephone Advice	% Referred to use face to face advice
Debt	95%	5%
Education	90%	10%
Discrimination ¹³³	90%	10%

Figure 78: Proportion referred to face to face advice versus telephone advice for mandatory categories of law (Period: 2013-14 to 2017-18)

Category of Law	Received Telephone Advice or Referred to Face to Face Provider	Referred to Face to Face Provider	% Referred to Face to Face Provider ¹³⁴
Debt	4,200	530	13%
Discrimination	7,800	20	< 1%
Education	5,600	<5	< 1%

¹³³ Prior to LASPO discrimination was not its own category, and issues were listed within other categories. Therefore, the IA noted, in a footnote, that “the data is not available to assess the impact on discrimination cases therefore they have been excluded from the analysis”.

¹³⁴ In the data there are cases labelled as ‘Other Work Completed’ (rather than ‘Matters Completed’) where an eligible client has been referred to a face to face provider early on in proceedings, these cases have been included when looking at the percentage of cases referred to face to face providers.

537. Figure 78 shows the actual proportions that were referred to face to face providers after the implementation of LASPO. The IA overestimated the amount of cases that would be referred to face to face for discrimination and education advice (10% vs <1%) and underestimated the amount for debt (5% vs 13%). However, the observed volumes referred to face to face (as shown in Figure 77) also includes referrals to civil representation, which for debt has included mortgage possession proceedings since LASPO. This could be one reason why the estimate for debt in Figure 77 does not match that of Figure 78.

538. The IA stated that approximately 30,000 cases could appropriately be offered specialist advice over the phone, rather than face to face advice. However, the total number of acts of assistance offered has been between 3,300 and 4,100 every year since the enactment of LASPO, as shown below in Figure 79.

Figure 79: Acts of assistance provided via the specialist telephone advice service in the mandatory categories of law (not including other work done¹³⁵)

Category of Law	2013-14	2014-15	2015-16	2016-17	2017-18
Debt	1,600	1,300	500	410	380
Discrimination	1,600	1,800	1,600	1,400	1,400
Education	300	1,100	1,200	1,500	1,500
Total	3,500	4,100	3,300	3,400	3,300

539. Figure 80 shows a breakdown of the overall volumes (both acts of assistance and other work done). It shows that debt advice via the CLA gateway fell by 98% after the implementation of the gateway and the scope reductions. The overall scope reductions were initially expected to reduce the volumes of debt by 74%.

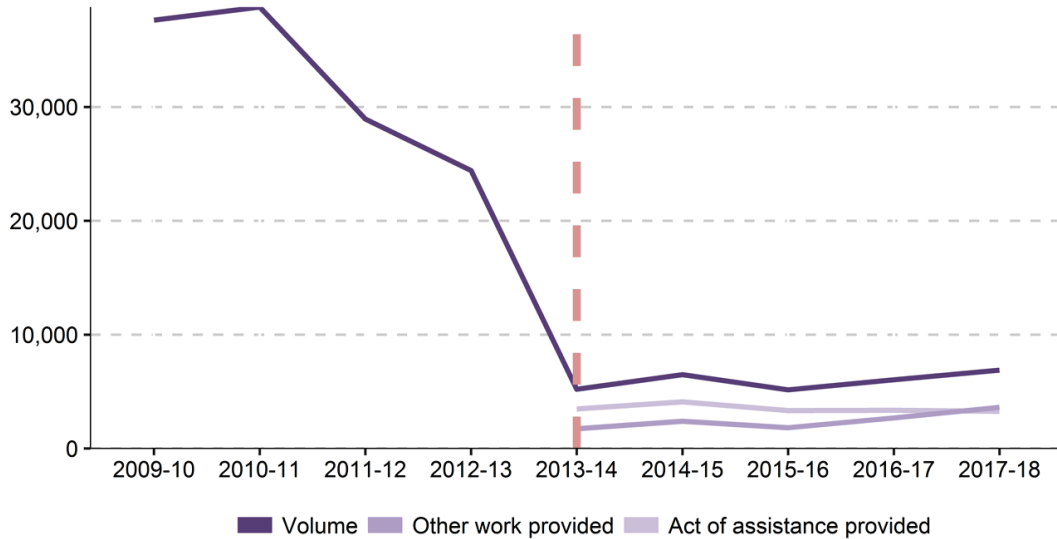
Figure 80: Volume of cases that dealt with by specialist advice service in the mandatory categories of law after the implementation of LASPO (acts of assistance and other work done)

Category of Law	13-14	14-15	15-16	16-17	17-18	Change Pre – Post LASPO
Debt	1,900	1,500	730	560	520	-98%
Discrimination	2,800	3,600	2,800	3,700	4,800	New
Education	530	1,300	1,600	1,800	1,600	-29%
Total	5,200	6,500	5,200	6,000	7,000	-72%

540. Figure 81 shows the volume of cases dealt since 2009-10. After LASPO, it was recorded whether an act of assistance was provided or if 'other work' was completed. For the pre-LASPO period work it is not possible to identify this distinction.

¹³⁵ 'Other work done' means that the case was determined not to be eligible for legal aid funded advice. It is also possible that a client is eligible for legal aid but are unsuitable for telephone advice. These clients are then referred to face to face advice early on, while still categorised as 'Other Work Provided'.

Figure 81: Volume of specialist telephone advice cases received in the mandatory categories of law



541. As can be seen, the volume was already in decline before the implementation of LASPO, and has continued to fluctuate around a similar number since 2013-14.

Accessibility of the CLA telephone advice line, particularly for vulnerable individuals

542. The Joint Commission on Human Rights’ tenth report ‘Enforcing Human Rights’ raised concerns that the CLA service may not be delivering adequate access to legal advice.¹³⁶ This was further supported by the EHRC, who have expressed particular concern about the operation of the Gateway for discrimination cases, which awarded eight public funding certificates a year on average between 2012 and 2017. However, certificates will have been awarded in other categories, such as Actions against the Police, where the subject matter of the discrimination claim relates to that category.

543. The EHRC has launched its own inquiry to examine the extent to which legal aid provides effective access to justice for individuals who raise a complaint of discrimination, in England and Wales.¹³⁷ At present, the results have yet to be published.

544. Calls to the CLA telephone gateway are not free.¹³⁸ Therefore, the cost to customers of accessing the legal aid service may be marginally higher under the policy than

¹³⁶ Joint Commission on Human Rights. 2018. *Enforcing Human Rights*. See: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/669/669.pdf>

¹³⁷ See: <https://www.equalityhumanrights.com/en/inquiries-and-investigations/legal-aid-victims-discrimination-our-inquiry>

¹³⁸ The CLA helpline operates through a 0345-telephone number. There is a charge to callers ringing this number from both landlines and mobiles (although some landline call packages now include such numbers within their free minutes bundle). The cost of calls from mobile telephones to this number will vary and will generally be higher than from a landline.

accessing face to face advice, although, clients will no longer have travel costs that will have been incurred from travelling to face to face appointments. In any event, to mitigate the effects of call costs on clients, the CLA Operator Service offers various ‘call back’ services. A caller can ask the operator to call them back, can text the operator service to request a call, or a ‘call back’ request can be made online.

545. During the consultative process of the PIR, concerns were raised by stakeholders that telephone advice was not suitable for vulnerable groups of people.
546. In her evidence submission to the review, Dr Marie Burton from Middlesex University London highlighted that vulnerable clients are more likely to find it difficult to engage with an adviser and communicate effectively without the benefit of non-verbal communication. Dr Burton’s research goes on to show that telephone and face to face advisers agreed that, for clients with more severe mental health problems, face to face advice was preferable because it was possible to communicate with the client more effectively.¹³⁹
547. The IA also stated that a variety of facilities would be available to ensure further access to the telephone service. The uptake of these facilities is shown in Figure 82 for the mandatory categories of law, after the implementation of LASPO. The most frequently used option is ‘Third Party Caller’. This allows a third party to call and act on the client’s behalf (subject to them having the relevant permission and information needed to pass the security checks). Overall, many of the available adjustments and adaptations have had a very low uptake.

Figure 82: Adjustment/Adaptations for matters completed in the mandatory categories of law (2013-14 to 2017-18)

Adjustment/Adaptation	2013-14	2014-15	2015-16	2016-17	2017-18
British Sign Language Webcam	10	0	0	0	0
Call Back Requested	60	140	40	60	40
Freepost Service	120	<5	40	30	10
Language Line	10	10	<5	<5	<5
Multiple Adaptations/Adjustments Required	30	10	20	20	20
Minicom	<5	0	0	0	0
No Adaptation/Adjustment required	3,100	3,500	3,000	3,000	2,800
Online Advice	30	30	10	<5	<5
Other	50	250	80	20	40
Skype/Webcam	<5	0	0	0	0
Translation or Alternative Format Required	<5	10	10	<5	<5
Third Party Caller	60	160	140	240	300
Typetalk (Text Relay)	0	0	<5	0	<5
Total	3,500	4,100	3,300	3,400	3,300

¹³⁹ Dr Marie Burton. 2018. *Justice on the line? A comparison of telephone and face to face advice in social welfare legal aid*, *Journal of Social Welfare and Family Law*. p195-215

548. As part of the 2014 review, operators and specialists felt that the array of adjustments and adaptations available to accommodate user needs were sufficient to deliver the CLA service, and were generally well regarded.
549. However, the review also highlighted that the offer of adjustments did not appear to be routine, and there appeared to be instances where a request of adjustment had been made but not facilitated, or where users believed the offer and application of an adjustment/adaptation would have facilitated their interaction with the service.¹⁴⁰
550. Figure 83 uses LAA client diversity data to show clients, grouped by disability, that were unsuitable for telephone advice in the mandatory categories of law. There does not seem to be a clear connection between having an accessibility issue and being referred to face to face advice. The proportion of clients with a disability accessing the specialist advice service in the mandatory categories have remained broadly similar, although an increase in clients not reporting makes could mask other impacts.

Figure 83: Proportion of clients referred to face to face provider by disability for mandatory categories of law (Period: 2013-14 to 2017-18)

Disability	Received Telephone Advice or Referred to Face to Face Provider	% Referred to Face to Face Provider
Blind	40	8%
Cognitive Impairment	10	0%
Deaf	30	3%
Hearing Impaired	50	6%
Long Standing Illness or Health Condition	1,800	5%
Learning Difficulty/Disability	410	4%
Mental Health condition	1,600	5%
Mobility Impairment	580	4%
Not Considered Disabled	8,300	3%
Other	600	4%
Physical Impairment	10	0%
Prefer Not to Say	50	12%
Sensory Impairment	630	0%
Unknown	3,400	1%
Visually Impaired	80	1%

551. The IA stated that exemptions to the mandatory gateway will be granted where the client is a child, the client is in detention, or where the client has been assessed by

¹⁴⁰ Ministry of Justice. 2014. *Civil Legal Aid mandatory gateway. Overarching research summary*. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/384307/cla-gateway-research-summary.pdf

the gateway as requiring face to face advice in the previous 12 months for a linked matter.

552. The number of exempted people who contacted the CLA specialist telephone advice service, in the mandatory areas, was fewer than five each year since LASPO. These volumes are low; however, the IA did not predict how many exemptions would be made.
553. In the category of debt, exempted persons can go straight to face to face advice without going through the specialist telephone advice service if they can find a provider. For education and discrimination, exempted clients will be referred to the CLA Specialist like other clients. However, if the client asks for face to face advice such advice must be provided by the CLA Specialist (or an agent acting on their behalf) without the need to carry out an 'assessment of suitability' for remote advice.
554. For those that do access the telephone service, the client feedback on the service is positive. Of clients who have received advice from a CLA specialist, 86% of clients would recommend the service and 89% of clients would rate their adviser as good or better. This suggests that telephone advice can be useful and effective, but the accessibility and awareness needs further consideration.

Impact on legal aid providers of the mandatory areas

555. The LAA opened its contract tendering process in September 2017, for CLA services that would commence from the beginning of September 2018. This included the services provided through the telephone gateway.
556. However, in early 2018 the procurement process for discrimination and education providers was cancelled as insufficient compliant bids were received. The LAA took steps to extend the existing contracts. Further extensions to the current education providers were made on an initial one-year term, with an additional further one-year extension option, whilst the discrimination contracts were extended for a fixed two-year period, which allowed for the current contracts to continue for up to two years until August 2020.
557. The low level of interest in these contracts suggest that there is a risk that the LAA will not be able to procure these contracts effectively in the future from providers of the appropriate quality and within a reasonable cost.
558. Providers have stated that the low volume of cases reduce the incentive to bid for the contracts. Specifically, in discrimination cases, providers have also said that the clients tend to make much higher than usual complaints about their case outcome, that take up non-fee earning time. This also impacts the economic viability of the contract.

Deliver better overall value for money for the taxpayer

559. As outlined above, a robust savings estimate is not available. Nevertheless, the overall reduction in spend of about £3m exceeds the £1-2m that we initially expected (although it should be noted that the £3m figure includes scope changes and the £1-2m figure excludes scope changes so these figures are not directly comparable). As such, the CLA telephone advice reforms seem to have achieved economy.

560. The mandatory element of the telephone gateway was to ensure that legal aid was being used in the most efficient way, delivering advice over the telephone rather than face to face where it is appropriate to do so. In that regard, the policy has achieved this objective. However, such a mechanism only functions successfully if, as described above, there are appropriate referrals to face to face advice where it is necessary. Therefore, whilst legally aided services were available to clients over the telephone, the low referral rates to face to face advice, and low usage of specialist advice over the telephone suggests, that the referral process may require further consideration. We cannot verify whether this is the case however due to limited data. Due to low take-up rates (excluding education) and referral rates to face to face consultations, as well as lack of face to face legal help provision of this sort, this policy may not have targeted legal aid at those who need it most. Taken together with the above this suggests that these policies have been somewhat effective.
561. More thorough analysis, which is not possible due to lack of data, is needed to properly evaluate the efficiency and equity effects of these policies. However, the shortage of suppliers willing to provide legal advice via the CLA (due to not being financially viable) indicates potential inefficiencies. On the other hand, if the lack of uptake and supply indicate a genuine lack of need for these services, these would not represent inefficiencies. Nevertheless, studies by the Ministry of Justice analytical services suggest this is not the case but rather that low up-take is due to a lack of awareness (and potentially appropriateness) of the services supplied over the phone.
562. On the whole, we have been unable to fully evaluate the extent to which these policies represent improved value for money, due to limitations in the data. Our plans on how to improve the CLA service are outlined further in the Action Plan.¹⁴¹

¹⁴¹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

The introduction of the Exceptional Case Funding scheme

Policy Summary:

563. Section 10 of LASPO introduced a new ECF, replacing the former ECF scheme.
564. The purpose of ECF is to provide legal aid for cases that do not fall within the scope of Part 1 of Schedule 1 of LASPO, but where, in the circumstances of the case:
- i. failure to do so would be a breach of the individual's Convention rights (within the meaning of the Human Rights Act 1998);
 - ii. failure to do so would be a breach of any rights of the individual to the provision of legal services that are enforceable EU rights; or,
 - iii. it is appropriate to provide legal aid, having regard to any risk that failure to do so would be a breach of such rights.
565. ECF may also be available for advocacy in proceedings at an inquest into the death of a member of an individual's family, provided the Director of Legal Aid Casework (DLAC) has made a wider public interest determination in relation to the individual and the inquest. Those applying for legal aid via ECF are still subject to means and merits test.

Changes since LASPO

566. There have been two main legal challenges against the ECF scheme since April 2013. The first case was *Gudanaviciene and others v Director of Legal Aid Casework and the Lord Chancellor*.¹⁴²
567. This case concerned six non-UK nationals, each challenging a decision that had been made not to grant ECF in their respective immigration cases. In June 2014, the High Court found that the test applied for ECF in relation to Articles 6 and 8 of the ECHR was too high, and that aspects of the Lord Chancellor's Exceptional Funding Guidance (Non-Inquests) were unlawful. In December 2014, the Court of Appeal mainly upheld the High Court's decision, judging that the Lord Chancellor's Guidance was incompatible with Articles 6(1) and 8 of the ECHR.
568. As a result of this judgment, the Lord Chancellor's Guidance was amended.¹⁴³ The LAA also published guidance for practitioners on refugee family reunion since the High Court ruled such cases are within the scope of legal aid. However, in the Court of Appeal decision it was found that these cases are not in scope of legal aid.
569. The second case was *IS v Director of Legal Aid Casework and the Lord Chancellor*.¹⁴⁴ This case was a general challenge to the operation of the ECF scheme. The High Court held in the claimant's favour on the following three

¹⁴² *Gudanaviciene and others v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWCA Civ 1622

¹⁴³ Lord Chancellor's Exceptional Funding Guidance (Non-Inquests), amended in June 2015. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477317/legal-aid-chancellor-non-inquests.pdf

¹⁴⁴ *IS v Director of Legal Aid Casework and the Lord Chancellor* [2015] EWHC 1965 and [2016] EWCA Civ 464

grounds: (1) that the ECF scheme was systematically flawed; (2) the general 50% prospects of success test for applications for legal representation for civil matters would result in breaches of the ECHR;¹⁴⁵ and (3) some passages of the Lord Chancellor's ECF Guidance were incorrect and unlawful.

570. The judgment was appealed, but in the meantime changes were made to the Merits Regulations and the ECF scheme on the basis of the High Court judgment. The Merits Regulations were amended so that, in cases subject to a prospects of success test, legal aid may be provided for cases assessed as having 'borderline' or 'poor' prospects of success, where it was necessary to determine that the prospects of success criterion was met to prevent a breach (or risk of breach) of the applicant's rights under the ECHR or enforceable EU rights. Similar substitutions to the prospects of success test were made for other specified categories of case, for example, applications for full representation in domestic violence cases.
571. In May 2016, the Court of Appeal overturned the High Court's judgment on all three grounds above, respectively:
- i. they held that the evidence of individual failings and unfairness did not establish that the scheme was inherently flawed;
 - ii. they held that the Merits Regulations (as they stood before the High Court decision) offered a balanced and proportionate approach that could not be condemned as arbitrary; and
 - iii. they held that the contested passages of the Lord Chancellor's ECF Guidance were not unlawful.
572. The Court of Appeal judgment made it possible to go back to the prospects of success test as it existed prior to the changes made following the High Court judgment. The changes made in response to the High Court judgment were revoked, but the Government did not return to its original position. Rather, it returned to a position allowing for an exception to the 50% threshold for prospect of success. Cases which were 'borderline' or 'marginal'¹⁴⁶ would meet the prospects of success test for civil legal aid for legal representation where the application meets one of the following three criteria:
- i. Overwhelming importance to the individual;
 - ii. Significant wider public interest;
 - iii. The substance of the case relates to a breach of Convention rights.
573. A case with marginal or borderline prospects of success (45-50%) would qualify for funding without needing to demonstrate overwhelming importance to the individual or significant wider public interest, if it falls into a certain category of cases. This

¹⁴⁵ As set out in the Civil Legal Aid (Merits Criteria) Regulations 2013 (Merits Regulations) – see: <http://www.legislation.gov.uk/ukSI/2013/104/contents/made>

¹⁴⁶ In the prospects of success test, cases that are judged as 'marginal' have a 45% or more chance of obtaining a successful outcome but less than 50%.

category included domestic violence cases, and cases involving defence to claims for possession.¹⁴⁷

To what extent has the introduction of the ECF scheme met LASPO's original objectives?

Making significant savings to the cost of the scheme

574. An estimate of the impact of ECF on legal aid expenditure has not been made, as the cases have been considered in each respective area of law already considered in this chapter. As LASPO changed the perspective on the scope of legal aid, there was not a comparable scheme that provided a 'safety net', and as such it is difficult to make a comparison.

Discouraging unnecessary and adversarial litigation at public expense

575. The introduction of the new ECF scheme is important to ensure that individuals outside of the scope of legal aid can still access legal aid when most in need – when their human rights have been breached, or are in risk of being breached. As such, the analysis focuses on the next objective – targeting legal aid at those who need it most.

Targeting legal aid at those who need it most

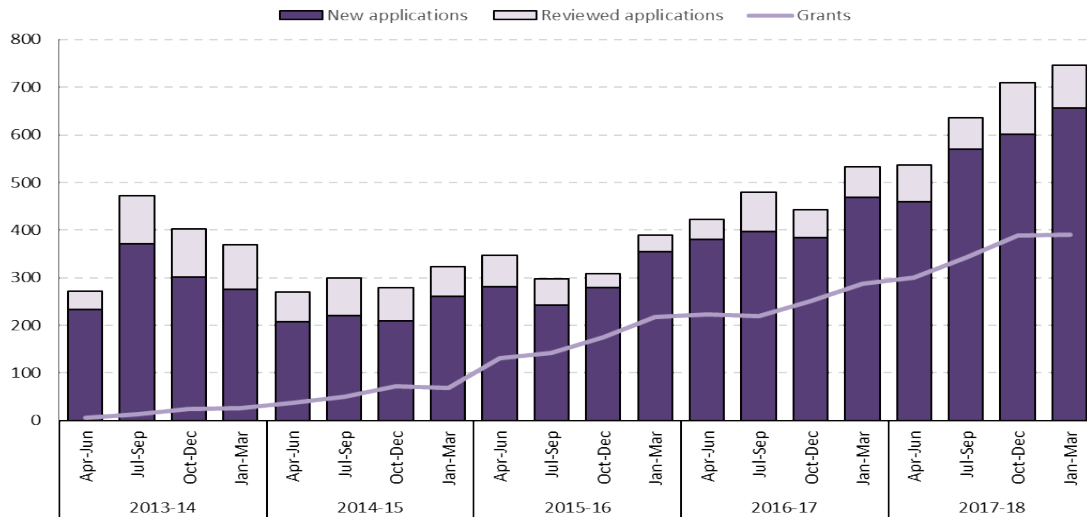
576. The volume of overall and successful ECF applications has consistently increased following an initial period of low volumes. This suggests that the ECF scheme, by providing legal aid funding where there would be a breach (or risk of a breach) of ECHR and EU requirements if legal aid is refused, is becoming increasingly successful at targeting legal aid at those who need it most. However, as was made clear during the evidence gathering phase of this review, stakeholders felt more could be done to improve the accessibility of the scheme for individual clients that are applying for funding via ECF.

577. There were estimates made in the IA on the proportion of out of scope cases that would receive legal aid funding through the ECF scheme post-LASPO. However, as each case is assessed on its merits the IA acknowledged that it was difficult to create an accurate estimate. The impacts of those estimates were included in the overall LASPO savings calculations in the IA.

578. Since the introduction of the ECF scheme, the number and proportion of applications that have been made have, overall, been increasing primarily from 2015-16 onwards. As such, in 2015-16, 2016-17 and 2017-18 around half of all applications that had been determined were granted. Figure 84 shows the volume of ECF applications received and the corresponding number of grants.

¹⁴⁷ The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016. See: The Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016

Figure 84: Volume of ECF applications received (new or reviewed¹⁴⁸) and grants



579. The most common applications in the ECF scheme are matters relating to Family, Immigration or Inquests, which collectively cover over 80% of applications. The fourth most common application type is Housing, but is much less common than the other three areas. Figure 85 shows the number of applications by category, with the grant rate below.

Figure 85: ECF applications and grant rates per financial year, 2013-14 vs 2017-18

	Applications				
	Family	Immigration	Inquests	Housing	All Other Categories
2013-14	820	230	200	80	180
2014-15	460	330	230	30	120
2015-16	390	490	240	50	160
2016-17	310	1000	290	50	230
2017-18	350	1600	420	50	250

	Grant Rate				
	Family	Immigration	Inquests	Housing	All Other Categories
2013-14	1%	2%	27%	1%	1%
2014-15	10%	17%	49%	10%	9%
2015-16	40%	66%	69%	4%	12%
2016-17	33%	69%	57%	15%	7%
2017-18	35%	68%	50%	16%	9%

¹⁴⁸ Applications can be re-submitted for review: this is where a case has previously been rejected or refused ECF and then resubmitted by the client for reconsideration.

580. In the first year of the scheme, excluding matters relating to Inquests, only 1% (around 130) of all other applications were granted. These figures were lower than anticipated. As stated by Lord Faulks, it was expected that circa 3,700 would be funded each year.¹⁴⁹ However, as outlined previously, limitations to the data available made providing exact, quantifiable estimations difficult.
581. The biggest change in terms of application volume and grant rates has been for Immigration cases. Following the appeal judgment in the case of *Gudanaviciene* in December 2014, grant rates for immigration cases increased, as the judgment declared that Article 8 (right to family life) matters in immigration cases required legal aid in equal manner to Article 6 (right to fair trial).
582. The effect of the judgment could be part of the general increase in both applications and grant rates since 2015-16, compared to when the scheme was launched in April 2013, as the LAA proactively changed their approach, accordingly.
583. The initial low numbers could be attributed to the surge of applications made prior to LASPO or the fact that in the early stages, applications were rejected because they covered issues which were already 'in scope' for legal aid, or were refused because they provided insufficient information for the purposes of making a determination.
584. When an application is refused it is because the ECF criteria (or the applicable means or merits tests) has not been met, but when an application is rejected it is because the application was in scope for a non-exceptional legal aid application, the forms weren't completed in full, were signed more than two months ago or the proposed provider did not have the necessary contract.
585. A drop in the refusal rate has meant that the proportion of cases granted has considerably increased since the reform of ECF. From 32% in January – March 2014, to 78% in January – March 2018. Similarly, the rejection rate has also fallen over the same period, from 23% rejected in January – March 2014, to 16% rejected in January – March 2018.
586. During the evidence gathering process there was a consensus from stakeholders that the forms an applicant is required to complete are too complex, creating an unnecessary hurdle to accessing ECF, despite amendments following the IS case. An example, as provided by PLP, is that the language used in the form ECF1¹⁵⁰ is unfamiliar to some of those filling it out – specifically direct clients, as described in the next paragraph. PLP go on to say that the form gives the impression that it is meant to be filled out by a legal aid provider.¹⁵¹
587. Unlike other legal aid applications, clients can make ECF applications directly to the LAA: if the ECF application sent directly by the clients is assessed as being eligible for ECF funding, their application may be granted subject to them finding a legal aid provider to act for them. Of the around 2,600 applications submitted to the scheme

¹⁴⁹ See: <https://publications.parliament.uk/pa/ld201314/ldhansrd/text/140211-0001.htm#14021176000398>

¹⁵⁰ The CIV ECF1 form asks questions regarding why the applicant is applying for ECF

¹⁵¹ Public Law Project. 2018. *Research Briefing Paper: Exceptional Case Funding*. See: <https://publiclawproject.org.uk/wp-content/uploads/2018/05/Exceptional-Case-Funding-Briefing.pdf>

in 2017-18, 17% were made by direct clients. This number has gone up from 2013-14 where only 5% of applications were made directly by individuals.

588. However, PLP raised concerns that ECF is still inaccessible for those who apply without the assistance of a legal aid provider. Specific concerns relate to the forms being too complex (for providers and direct clients) and that there is a lack of assistance and information available about the scheme in general. During the LAPG's LASPO Review Conference, it was put forward that the stress of ECF applications leads vulnerable people to abandon their claims. However, client applications do not have to complete all the usual forms, and the forms can be entered for 'early investigations', to explore the possibility of a subsequent more substantive application.
589. Successful ECF applications have been considered in this analysis under the relevant categories of law. The IA also included ECF within the various areas of law, so the findings here are limited to noting that there have generally been far fewer grants than anticipated in the IA.¹⁵² It also means that the costs associated to ECF granted certificates cannot be distinguished from other certificates.
590. As part of their submission to the Bach Commission, Resolution put forward the view that the Government is very reluctant to give any examples of what sort of cases attract ECF. But by releasing appropriate details of cases that have been successful in obtaining ECF, they believe it could help increase access to justice.¹⁵³
591. The Lord Chancellor's guidance does however go some way in providing examples in its annex, detailing specific case considerations that may be particularly relevant in certain types of cases.
592. Our plans to consider simplifying the ECF are outlined in the Action Plan.¹⁵⁴

Delivering better overall value for money for the taxpayer

593. Without an estimate of the monetary impact of the introduction of ECF, it is not possible to assess whether this scheme has achieved economy against the NAO framework outlined in the introduction (paragraphs 107-113).
594. Issues with the accessibility of the ECF scheme have hindered the primary objective of ensuring legal aid availability for applicable cases. For instance, research by PLP shows that complex form filling (seemingly more appropriate for a legal help provider) and heavy evidence requirements may deter applications for ECF especially for vulnerable people.
595. Moreover, the lack of backdating for unsuccessful applications may deter providers from taking on applications, given the provider is 'at risk' for that stage of the process. However, rejection and refusal rates have been falling since 2014, suggesting that accessibility has improved. Thus, it is not clear to what extent this

¹⁵² This was noted in the 'Risks and Uncertainties' section of the IA: 'The actual number of successful applicants to the Exceptional Case Funding scheme may differ from that assumed.'

¹⁵³ Resolution. 2016. *The Bach Commission on Access to Justice - Evidence from Resolution*.

¹⁵⁴ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

scheme has been effective and whether it is entirely equitable. It is therefore not possible to conclude that the changes represent value for money.

1.3 Private family law scope changes

Policy Summary:

596. Private Family Law refers to proceedings concerning disputes or issues associated with families and/or relationships. They are often conducted between individuals in connection to or following parental separation (although some cases involve financial disputes between people without children). Such cases are important in determining the future of the children involved in proceedings, determining who they live or spend time with, who has parental responsibility for them and what financial support they may receive. This is different to Public Family Law which concerns disputes between the State and a family.
597. Private Family Law proceedings can be divided into the following categories:
- i. Private Law Children proceedings – includes disputes about divorce or separation, contact and/or residence arrangements for children, prohibited steps orders, domestic child abduction and others;
 - ii. Domestic Violence – injunctions, occupation orders of the (former) home, committal orders, protection of children from abuse, or other orders for the protection of a person from harm or forced marriages, such as a non-molestation order;
 - iii. Financial Provision – disputes around the division of financial assets and property on the dissolution of a marriage or civil partnership. This includes disputes about the marital home or other assets;
 - iv. Other Family Proceedings – defended divorce, nullity, civil partnership rights, applications under the Human Fertilisation and Embryology Act 2008 and various other proceedings.
598. Prior to LASPO legal aid was available for these proceedings, subject to an individual fulfilling means and merits criteria. Private family law was a major area of expenditure prior to LASPO. In 2012-13, it is estimated that over £190 million on legal help and civil (and family) representation in private family law cases.
599. The initial consultation outlined the rationale for removing private family law cases from scope. It was said that whilst those going through relationship breakdowns may be dealing with a difficult situation, both emotionally and practically, this did not necessarily mean that the individuals bringing these cases were always likely to be particularly vulnerable (compared with detained mental health patients, or elderly care home residents, for example), or that their emotional involvement in the case meant that they were unable to present it themselves. The consultation document set out that there was no reason to believe that such cases would be routinely legally complex.¹⁵⁵
600. It was also suggested that legal aid funding was often used to support lengthy and intractable family cases which may be resolved out of court if funding were not available. In such cases, the consultation document suggested a move to a position

¹⁵⁵ LAR consultation, para 4.207. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf

where parties were encouraged to settle using mediation, rather than protracting disputes unnecessarily by having a lawyer paid for by legal aid.¹⁵⁶

601. Under LASPO private family law proceedings were removed from the scope of legal aid. However, five major exceptions were made where legal aid funding remained available. These were:
- i. Proceedings in the domestic violence category (e.g. non-molestation and occupation orders). The Government concluded in its initial consultation that the importance of the issue and potential vulnerability of litigants was such that funding for individuals in these circumstances must be retained.
 - ii. Proceedings involving children, financial provision and other family proceedings where domestic violence and/or child abuse could be evidenced against a set of evidence requirements set out in regulations. This route of attaining legal aid is often referred to as the 'domestic violence evidence gateway'. The scope of the gateway has been widened several times since LASPO's implementation, most notably with the expansion of the list of qualifying evidence and removal of the time limitation for evidence, which were introduced in January 2018.
 - iii. Proceedings in which a judge makes a child party to proceedings were retained in scope. This could be where the child is joined as a party (rule 16.4 of the Family Procedure Rules) and where the client is under 18 years of age, regardless of whether they are the applicant or the respondent. For the latter, the funding ceases when the client turns 18.
 - iv. Proceedings in connection with orders to prevent international child abduction.
 - v. Proceedings to secure the return of an abducted child, or proceedings involving various cross-border issues under EU and international law.
602. There was also a later amendment to ensure orders to prevent domestic child abduction remain in scope. This included prohibited steps orders, orders requiring the disclosure of a child's whereabouts, orders requiring the child's return and orders requiring surrender of the child's passport.

Encouragement of mediation

603. Family mediation is where an impartial and independent professional mediator helps individuals who are associated with each other as defined under the Family Law Act 1996 work out agreements relating to issues such as child arrangement, child maintenance payments and finances. This includes divorcing or separating couples.
604. Since LASPO there has been an expectation that all private law applicants should attend a Mediation Information Assessment Meeting (MIAM) before applying to court to determine suitability for mediation, although there is no such expectation where there is a context of domestic abuse.
605. It was anticipated that the removal of large areas of private family law from scope would incentivise people to consider out of court resolution pathways. Legal aid for family mediation remains in scope (subject to means testing, although it is non-

¹⁵⁶ Ibid, para 4.211

contributory and the statutory charge does not apply) to facilitate people to resolve their disputes without going to court.

606. Legal aid for mediation provides funding for three different components:
- i. Payment for the MIAM;
 - ii. Payment for the mediation itself;
 - iii. Payment for 'help with family mediation' – legal advice (predominantly for advice on agreements reached) during the mediation process and following the outcome.
607. Regulations under LASPO created a new form of service called 'help with family mediation' where eligible clients participating in family mediation are entitled to legal advice to support the mediation process. It also supports the drafting and issuing of proceedings to obtain a court order where financial or property matters are resolved through mediation. Prior to LASPO legal advice during mediation was available through legal aid through civil representation under a level of service called Help with Mediation.
608. Where one party is eligible for legal aid and the other is not, the Government can pay for both parties to attend a MIAM (whether together or separately) to encourage participation in mediation. From 2014, the Government began funding the first full session of mediation for both parties as well, where only one of the parties is eligible for legal aid. This was in response to recommendations from a family mediation Task force, which was established to combat the falling uptake of mediation.

To what extent have the LASPO scope change achieved its original objectives in this area?

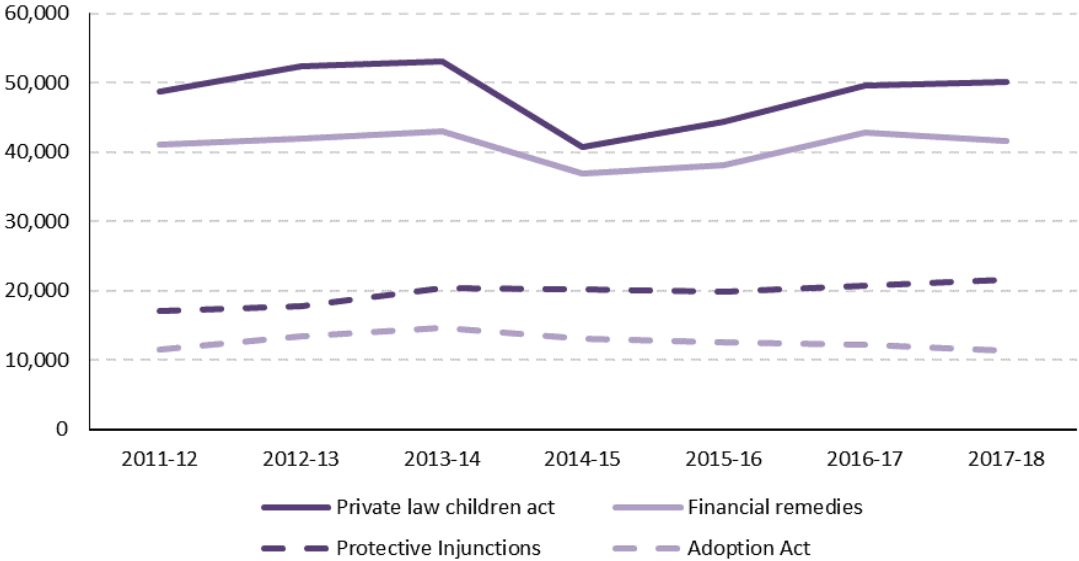
Discouraging unnecessary and adversarial litigation at the public’s expense

609. The aim to promote the use of mediation, instead of adversarial and unnecessary litigation, does not appear to have been met. It certainly has not been met with regard to publicly funded mediation services. However, as we do not currently hold data for privately funded mediation, it is not possible to give a conclusive assessment.

610. Whilst the volume of publicly funded mediation was expected to increase, it has actually declined, largely because of the removal of funding for legal aid providers to refer clients towards mediation.

611. Moreover, the volume of family cases (in general) has increased, following a decline in 2014-15. Figure 86 shows the volumes of private family cases starting in the family courts. Matrimonial matters (including divorce, annulment and judicial separation) have been excluded because a high proportion of divorce cases do not involve or require legal aid.

Figure 86: Cases starting in the family courts, excluding public family children act and matrimonial matters^{157,158}



Volumes of MIAMs

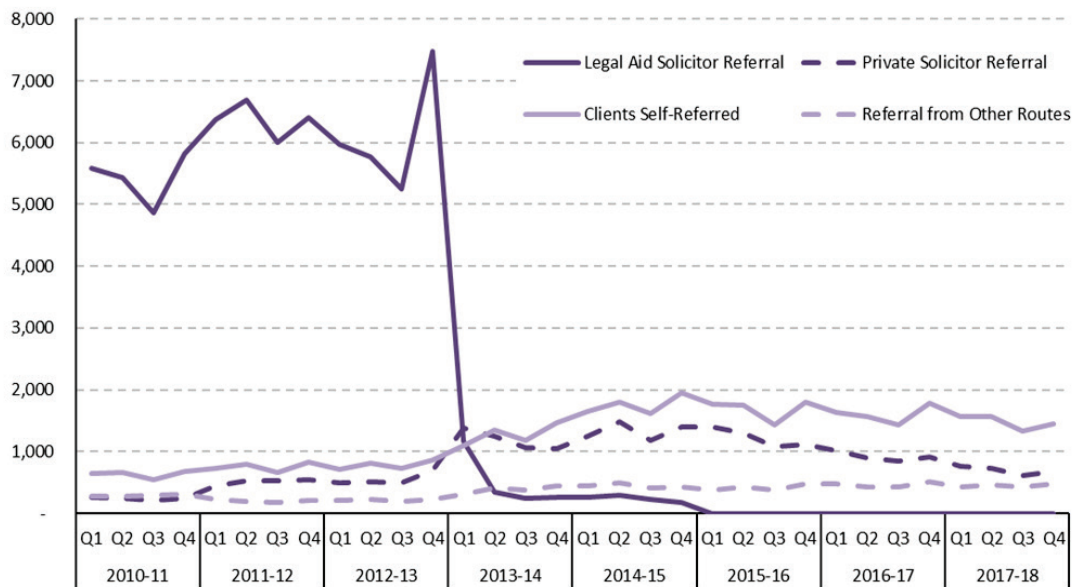
612. The IA which preceded LASPO estimated that, as a result of the removal of private family law proceedings from scope, the number of legal aid funded MIAM sessions would rise by 9,000 per annum and the number of mediations would rise by 10,000.

¹⁵⁷ Protective injunctions include domestic violence remedy orders, forced marriage protection orders and female genital mutilation protection orders.

¹⁵⁸ Source: table 1, Family Court Statistics Quarterly, January to March 2018, <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2018>

613. Contrary to expectations, the number of MIAMs declined upon the implementation of LASPO. Figure 87 shows that the number of MIAMs fell by 66% between 2012-13 and 2017-18. The loss of the primary referral routes to mediation is the most significant factor in the post-LASPO decline in MIAM uptake. Prior to LASPO, the majority of referrals to mediation were made by legal aid funded solicitors. The removal of private family law from the scope of legal aid removed the opportunity to refer cases towards mediation.

Figure 87: Volume of Publicly Funded MIAMs by Referral Routes¹⁵⁹ 2010-11 to 2016-17¹⁶⁰



614. Prior to LASPO, clients could not receive a legal aid certificate unless they had first considered mediation (save for certain exceptions, including where there was domestic violence). This applied to both the applicant and the respondent. In addition, there was a contractual requirement that solicitors funded by legal aid had to have appropriate arrangements for referral to a local provider of mediation services where appropriate for the client.

615. During the evidence gathering phase it was suggested by the Family Mediation Council, amongst others, that the funded link from solicitor to mediation needed to be reintroduced, to drive up the volume of MIAMs. It is argued that without the referral from solicitors, many users of the justice system are unaware that legal aid is available for mediation. National Family Mediation have asserted that *“the promotion of the availability of legal aid for family mediation has been at best very poorly managed and, even today four years later, there is confusion and misinformation about precisely what legal aid is available for family cases.”*¹⁶¹

616. Organisations such as Resolution have suggested that there is a lack of incentive for providers to undertake help with mediation work. Organisations have pointed to

¹⁵⁹ Source: Legal aid statistics in England and Wales, more detailed data, January to March 2017

¹⁶⁰ Referral from other routes includes from court, GP/NHS, CAB, other advice agency or telephone helpline, Relate or other relationship counselling, and where the referral route is other/unknown.

¹⁶¹ National Family Mediation. 2018. Evidence submission to this review. p2.

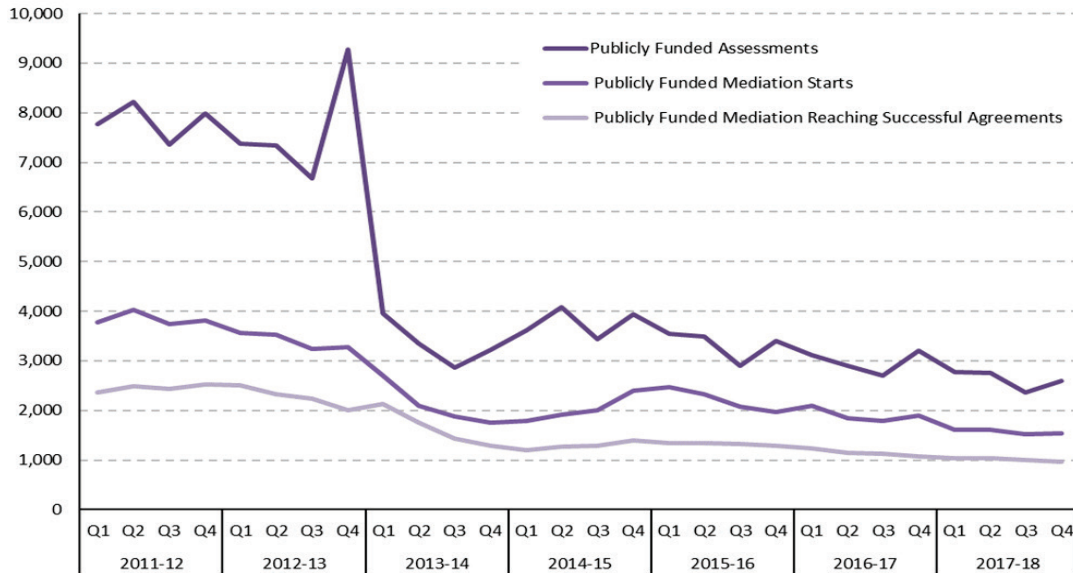
the level of remuneration and a potential risk of liability when conducting this work as key reasons why many providers have chosen not to undertake this type of work. The level of remuneration will be considered in Chapter 3.

617. The Family Mediation Council have asserted that judges need to use the power of adjournment more frequently, to ensure mediation is attempted. In this space, the Children and Family Court Advisory and Support Service (CAFCASS) and the Ministry of Justice ran a pilot in Manchester between January and July 2018 to understand the potential for an in-court model to help parents come to an agreement without the need for the first court hearing, or to narrow some of the issues in dispute. Parents were only eligible once they had made an application to court and were assessed as suitable to take part in out-of-court interventions. The pilot offered eligible parents the opportunity to attend a MIAM, mediation sessions, a Separated Parents Information Programme (SPIP) and a Parenting Plan meeting, depending on CAFCASS' assessment of the case. Early findings indicate that between 14%-20% of cases may be suitable to resolve without the need for court.
618. A number of Resolution family mediators reported that they feel under pressure to mediate in cases where they do not feel it is suitable because there are no alternatives for their clients. These clients are also said to have unrealistic expectations of mediation as a result of not speaking to a solicitor prior to the mediation, and so struggle to settle.
619. While other routes to referral have expanded since LASPO, these have not increased enough for pre-LASPO volumes to be achieved. Self-referrals by clients have risen substantially since 2013, from 10% of referrals to over half. Private solicitor referrals have also increased, from 7% of referrals in 2012-13 to 26% in 2017-18. Lastly, referrals from other sources have risen from less than 5% before LASPO to 17% in 2017-18.
620. In the three years before LASPO's implementation, 49% of MIAMs led to a mediation, compared with an average of 61% in the three years after implementation.

Volume of Mediations

621. Alongside the decline in MIAMs, mediation starts also declined after the introduction of LASPO. From 2012-13 to 2017-18 the number of mediation starts fell 54%. The introduction of the statutory MIAM in April 2014 led to an initial rise but has since declined and remains well below the levels originally anticipated.

Figure 88: Volume of Publicly Funded MIAMs, Mediation Starts and Full/Partial Agreements 2011-12 to 2016-17



622. The proportion of mediations reaching full or partial agreements has reduced slightly from 67% in 2012-13 to 64% in 2017-18.

Targeting legal aid at those who need it most

- 623. The initial policy intended to target legal aid at mediation, so as to encourage non-adversarial resolutions. The low uptake in mediation suggests that the reduction of scope for legal aid has led to individuals either representing themselves in court or not passing through the justice system to resolve their problems. As such, it could be argued that legal aid, where it is available, has not been successful at targeting the cohort of cases intended by the original policy.
- 624. The low initial uptake of legal aid for domestic violence victims further supports this conclusion. However, this has increased since the broadening of the evidence requirements and evidence suggests uptake is improving. Interested parties suggested that more could still be done to improve awareness of the availability of legal aid.
- 625. The original IA estimated that there would be an annual reduction in the number of legal help matter starts of 80% and a reduction of certificates for legal representation of 41%. It was thought that this would equate to 200,000 fewer legal help matter starts and 32,500 fewer legal representation certificates per year.

Figure 89: Estimated annual volume and spending reductions for legal aid in private family law proceedings 2012-13 to 2017-18

Level of Service	Category of Law	Change in case volumes	Change in volume %	Change in spend	Change in spend %
Legal Help	Total Private Family Law¹⁶²	-200,000	-80%	£50m	-80%
	Combined Family Matters	0	-2%	£0m	0%
	Domestic Violence	0	0%	£0m	0%
Legal Representation	Financial Provision	-8,000	-64%	£7m	-72%
	Other Family Matters	-660	-65%	£2m	-83%
	Private Law Children	-23,800	-53%	£70m	-70%
	Total Private Family Law	-32,500	-41%	£80m	-38%

626. It was thought that the remaining 20% of existing Legal Help and 59% of Legal Representation certificates would continue to qualify for funding through the domestic abuse and child abuse gateway, where a child is party to proceedings or for potential cases receiving legal aid through the ECF scheme.

627. The IA assumed that 40% of civil representation certificates (28,000) would continue to receive funding through the domestic violence and child abuse gateway specifically. However, the observed reduction in volumes and spend have been much greater than those estimated by the IA (Figure 90). Between 2012-13 and 2017-18 legal help volumes fell by 94% with an associated decline in spend of 95%. The volume of legal representation certificates granted has also declined by 68% with a proportional 68% reduction in spend.

Figure 90: Actual change in annual volume and estimated spending reductions for legal aid in private family law proceedings 2012-13 to 2017-18

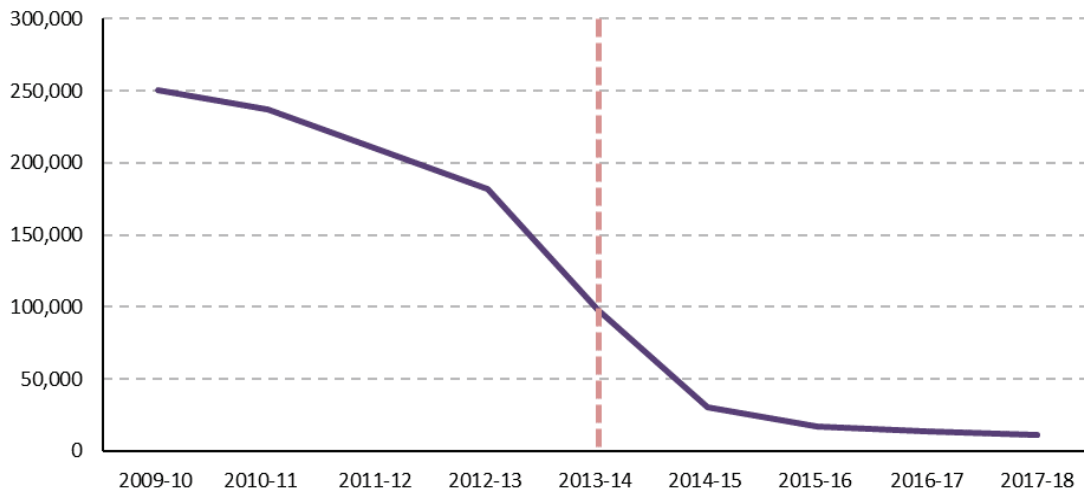
Level of service	Category	Actual Volume Change	Actual Volume %	Actual Spend Change	Actual Spend %
Legal Help	Total Private Family Law	-170,000	-94%	£30m	-95%
	Combined family matters	-10	-100%	0m	-100%
	Domestic violence	-2,400	-15%	£9m	-22%
Legal Representation	Financial provision	-7,400	-92%	£7m	-94%
	Other family proceedings	-1,400	-95%	£5m	-95%
	Private children	-42,300	-79%	£110m	-79%
	Total Private Family Law	-53,500	-68%	£130m	-68%

628. While legal help volumes were already declining prior to LASPO, the scope changes can nevertheless be seen to have had an impact upon case volumes. Volumes declined as a result of the removal of the majority of proceedings from scope. Since 2015-16 legal help case volumes have remained stable.

¹⁶² Because of differences in the way Legal Help and Civil Representation were recorded, no breakdown for Legal Help into the different private family categories was provided in the IA.

629. Figure 91 shows the volume of private family legal help cases at the point at which a provider submits a claim to the LAA, it is difficult to distinguish private and public cases at the point of application and as a result, the impact of the scope changes is not immediately observable at the point of implementation, as it takes time for pre-LASPO cases to filter out.

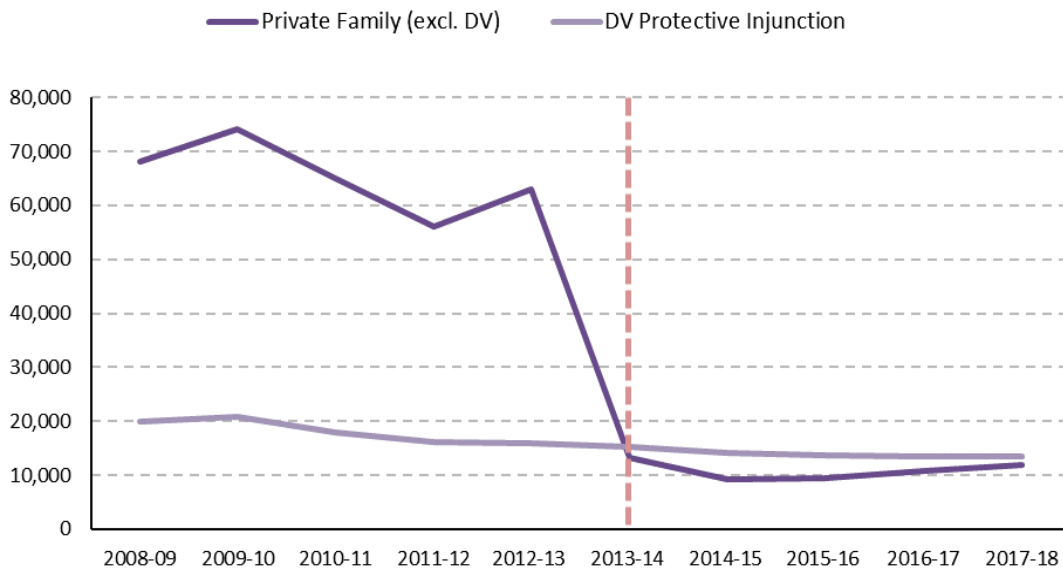
Figure 91: Private family law legal help claims submitted 2009-10 to 2017-18



630. Representation case volumes also declined after the introduction of LASPO. Certificate grants (excluding DV protective injunctions, which remained in scope) fell by 81% between 2012-13 and 2017-18, which is more than the 41% expected in the IA (Figure 92). This difference is partly due to there being fewer grants through the domestic violence evidence gateway than expected.

631. However, the extent of the decline has also been inflated due to the spike in volumes in the quarter before LASPO's implementation. This spike most likely occurred as a result of applications being expedited by providers in anticipation of the removal of the majority of proceedings from the scope of legal aid.

Figure 92: Private family law certificates granted 2009-10 to 2017-18



Special Guardianship Orders

632. During the evidence gathering phase many interested parties raised concerns regarding the unavailability of legal aid relating to Special Guardianship Orders (SGO). A SGO is a private family law order (under Part 2 Children Act 1989) made by the family court that places a child, or young person, in the care of someone other than their parent(s) on a long-term basis.

633. For example, the Family Justice Council asserted that SGO share many characteristics with public law cases. They state that SGOs involve concerns regarding the welfare of the child but also can relate to cases where efforts are being made to keep the child within the family and friends network. As such, the Family Justice Council (and others) have presented the argument that legal aid for these cases should be reinstated.

634. Please refer to the Action Plan¹⁶³ for how we propose to respond to these concerns.

Domestic Violence and Child Abuse Gateway

635. The Government is committed to doing everything we can to tackle domestic abuse and support victims wherever possible. Legal aid was targeted at those most in need by the introduction of the domestic violence and child abuse gateway. A number of changes have been made since LASPO to ensure that domestic violence victims receive the appropriate support.

636. To receive legal aid through the domestic violence gateway, an individual must present evidence of domestic abuse. The evidence requirements are set out in the Civil Legal Aid (Procedure) Regulations and have been subject to several changes since their introduction.

¹⁶³ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

637. In April 2014, the list of accepted evidence was expanded. In July 2015 a change was made to allow for legal aid granted based on evidence of domestic violence or child abuse to remain available, without having to be resubmitted, until the end of a case.
638. In April 2016, in response to judicial review proceedings brought by Rights of Women, the Government made a further change. This increased the time limit on evidence from 2 to 5 years and made provision for the consideration of evidence demonstrating financial abuse.
639. After conducting research, the Government made a further change to the procedural regulations in January 2018. This removed the time limits on evidence of domestic violence and child abuse and made further additions to the list of acceptable forms of evidence of domestic abuse. The aim of each change was to relax the evidence requirements and to allow greater access to legal aid for victims.¹⁶⁴
640. In emergency situations, legal aid is available without any evidence requirements and the LAA has the power to waive all upper financial eligibility limits. An example of an emergency situation could be if a victim of domestic abuse needs a non-molestation order to protect them or their children from being harmed. In this case, their solicitor would be able to grant emergency representation straight away even if the victim's income or capital exceeds the eligibility limits, although a contribution from them may be required later.
641. The LAA has put several steps in place to ensure high-quality advice is delivered in domestic abuse matters. The agency requires that providers who deal with a large number of matters must employ at least one member of staff with specialist training, and that providers, under the 2018 contract must employ a full-time supervisor who is either a member of the Law Society's Family Law Advanced Accreditation Scheme or is a Resolution Accredited Specialist in domestic abuse. Providers must also have appropriate arrangements in place to refer clients to local family support services, and have access to details of services locally available, and they must offer a first appointment to their client within a defined time limit.
642. The Government consulted last year on how we can best tackle domestic abuse and has heard from a wide range of stakeholders, including survivors of domestic abuse and the organisations that support them. On 21 January the Government published the consultation response and the draft Domestic Abuse Bill which will further raise awareness of domestic abuse, enhance the safety of victims and bring more perpetrators to justice.¹⁶⁵ Subject to Parliamentary approval, the Bill will also introduce:
- a statutory Government definition of domestic abuse, which will highlight economic abuse as a distinct type of abuse;
 - new domestic abuse protection notices and a domestic abuse protection order (DAPO);

¹⁶⁴ The full list of evidence requirements (including appropriate forms of evidence) can be found here: <https://www.gov.uk/legal-aid/domestic-abuse-or-violence>

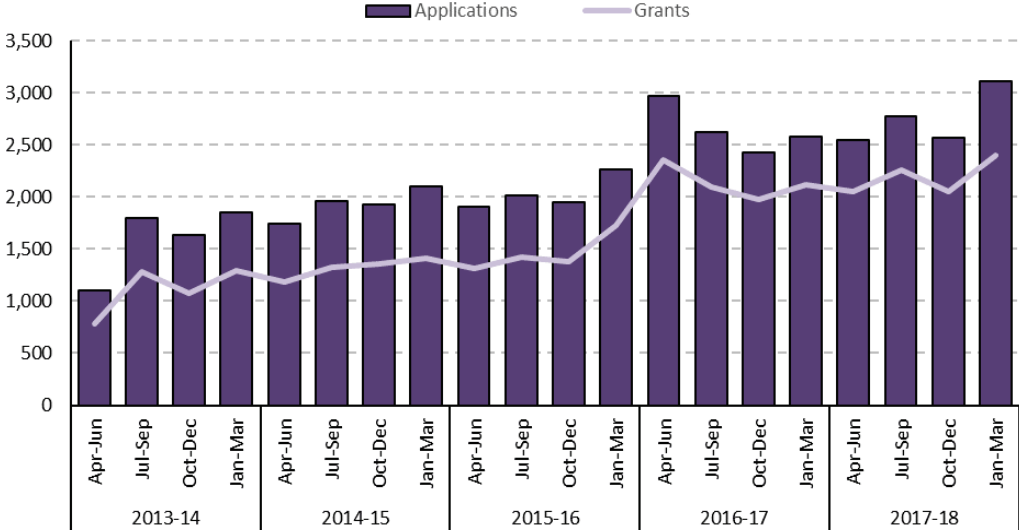
¹⁶⁵ See: <https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>

- automatic eligibility for victims to access special measures in criminal courts to reduce the stress of giving evidence in criminal proceedings;
- a Domestic Abuse Commissioner who will work to ensure that services are provided – whether for victims and families, perpetrators, or those at risk – that are as effective, evidence-based and safe as they can be; and,
- a statutory footing for guidance supporting the Domestic Violence Disclosure Scheme (Clare’s Law).

643. In addition, the first ever cross-government Victims Strategy (launched in September 2018) will boost the support and protection available for victims, including victims of domestic abuse.¹⁶⁶ In addition, the Government has pledged an additional £20m over this Parliament to support organisations combatting domestic abuse.

644. The volume of applications and grants since the implementation of LASPO indicates that changes to the evidence requirements have been successful in increasing the number of successful applicants for legal aid. As Figure 93 shows in 2017-18 there were 11,000 applications where evidence of domestic violence or child abuse was provided for legally aided representation in private family law proceedings. Of these, 8,800 (or 80%) were granted, the highest number across the period. The number of applications and grants has increased over time since the evidential arrangements first came into force in April 2013.

Figure 93: Applications and grants received via the domestic violence and child abuse gateway 2013-14 to 2017-18



645. As Figure 94 shows, of the refused applications in 2017-18, just 4% were refused on the basis of evidence (including 1% which were refused due to both evidence and ‘other grounds’). 12% of applications were refused funding on ‘other grounds’ – largely means and merits testing – although data collection is not detailed enough to determine what the unknown category includes.

¹⁶⁶ See: <https://www.gov.uk/government/publications/victims-strategy>

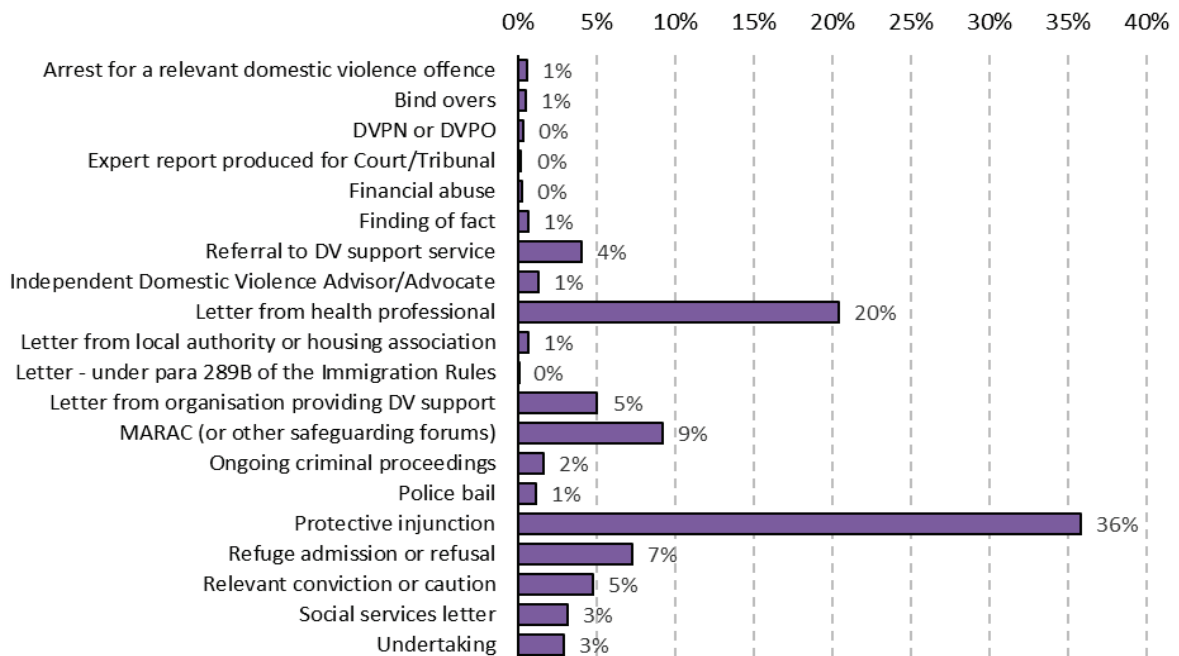
Figure 94: Refusal reasons through the DVCA gateway in 2017-18

Grant status	Refusal reason	Volume	%
Granted	N/A	8,800	80%
Not Granted	Refused on both evidence and other grounds	90	1%
Not Granted	Refused on evidence only	290	3%
Not Granted	Refused on other grounds	1,400	12%
Not Granted	Unknown	490	4%
Total	Total	11,000	100%

646. The LAA collects data on the forms of evidence which individuals use to evidence that they have suffered domestic violence or child abuse. Figure 95 below shows the frequency with which different types of evidence were used.

647. Protective injunctions were the most common form of evidence. Letters from a health professional examining the victim and confirming they had injuries or a condition consistent with those of a victim of domestic violence were also common. Together these two forms of evidence make up almost half of all types submitted in 2017-18. Forms of evidence related to the criminal justice system, such as a relevant conviction or caution for an offence related to domestic violence, were less common.

Figure 95: Percentage of total counts of evidence for legal aid where evidence of domestic violence is submitted¹⁶⁷ 2017-18



¹⁶⁷ Applications where the evidence category is unknown or unclear from the data held for reporting purposes are not included in the table.

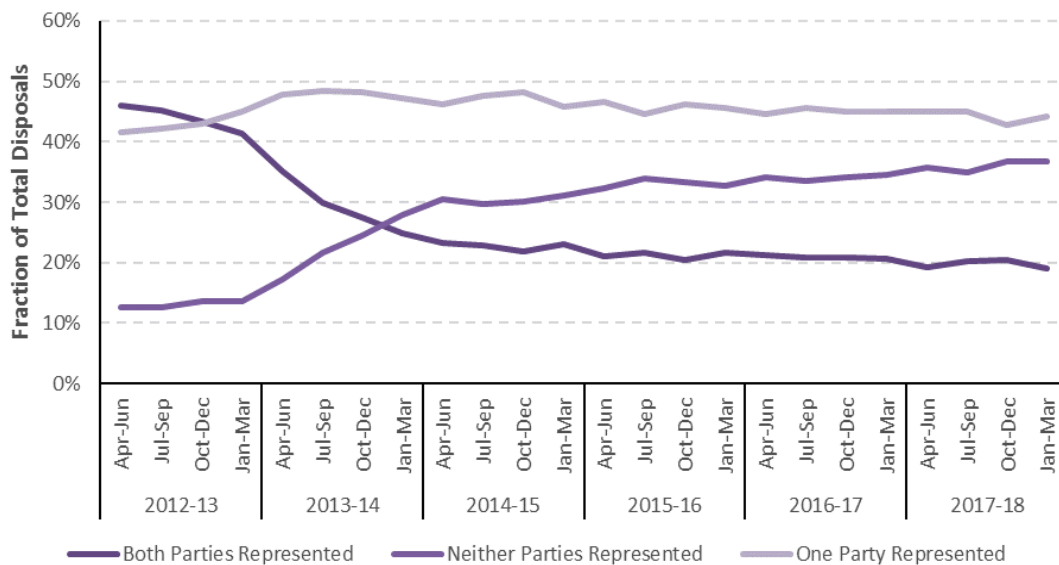
648. A number of organisations submitted evidence during the LASPO consultation, including Resolution, Rights of Women, and Women's Aid. Members of Resolution reported that there are low levels of awareness of the evidence required to access legal aid via the gateway among the public. Resolution invited its members and others working in family justice to share their experiences in a survey, which it submitted as evidence to this review. The majority of respondents to the survey said that none or less than 10% of people that contacted their practice in the last year knew about the evidence requirements before making contact, and large numbers do not return when asked to gather this evidence.
649. This lack of awareness appears to be not only a problem amongst the public, but amongst legal professionals too. Rights of Women expressed concern that a number of people are being misinformed about their eligibility of legal aid, due to a lack of understanding amongst professionals and the public. Callers to its advice line say that they have been told that legal aid is no longer available for family law and that they did not have the type of evidence that would pass the gateway criteria (even though they did). They also said they needed gateway evidence for legal aid to apply for a domestic violence injunction (even in instances where funding can be granted without gateway evidence¹⁶⁸).
650. This concern is also reflected in the Ministry of Justice's 'Varying Paths to Justice' report, which suggests that "*further work may need to be done to ensure that legal professionals are providing accurate advice and guidance on legal aid eligibility*". Some stakeholders reported that practitioners are advising clients to get a specific piece of evidence, rather than being open about all the different types of evidence that would be suitable.
651. Positively, 46% of respondents to Resolution's survey reported that fewer people at risk of domestic abuse and fewer victims of domestic abuse are being turned away since the widening of the gateway evidence requirement in January 2018. However, Resolution and Rights of Women both report that many victims of domestic abuse are still unable to satisfy the evidence requirements. The two organisations suggest that this is commonly due to professional letters not being in the prescribed form, or due to a lack of evidence, as often the first time the issue comes to light is during a conversation with their lawyer. To streamline the process, Resolution members called to remove the requirement for gateway evidence or make it easier to gain this evidence, by ensuring professionals (such as GPs) know that they have a duty to provide this information at no cost.
652. Several Resolution members also reported that the widening of the gateway requirement has not made it any easier for those facing financial or coercive control to provide sufficient evidence to access legal aid. Please refer to the accompanying Action Plan¹⁶⁹ for more information about raising awareness of the availability of legal aid.

¹⁶⁸ Injunctions following assault, battery or false imprisonment can be funded without gateway evidence when it is in relation to home rights, occupation orders and non-molestation orders under Part 4 of the Family Law Act 1996

¹⁶⁹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

- 653. Ability to self-represent, the impact of the rise in litigants in person and the support available
- 654. Throughout the evidence gathering phase it was raised that litigants in person can increase the duration of the case, and can often create difficulties for the judge to remain impartial. The Government acknowledges that litigants in person require more support, to help individuals navigate through the justice system. However, it is not accepted that the justice system cannot function with the increased presence of litigants in person. Access to a lawyer is not always the correct or most affordable answer.
- 655. As expected, the removal of legal aid for private family law cases has led to an increase in the number of unrepresented parties. In 36% of private family law cases in 2017-18 neither party had representation, an increase from 13% from 2012-13. Correspondingly the proportion of disposals where both parties had legal representation dropped from 44% to 20% over the same period.¹⁷⁰ Figure 96 shows this.

Figure 96 – Private family law volumes by representation of parties

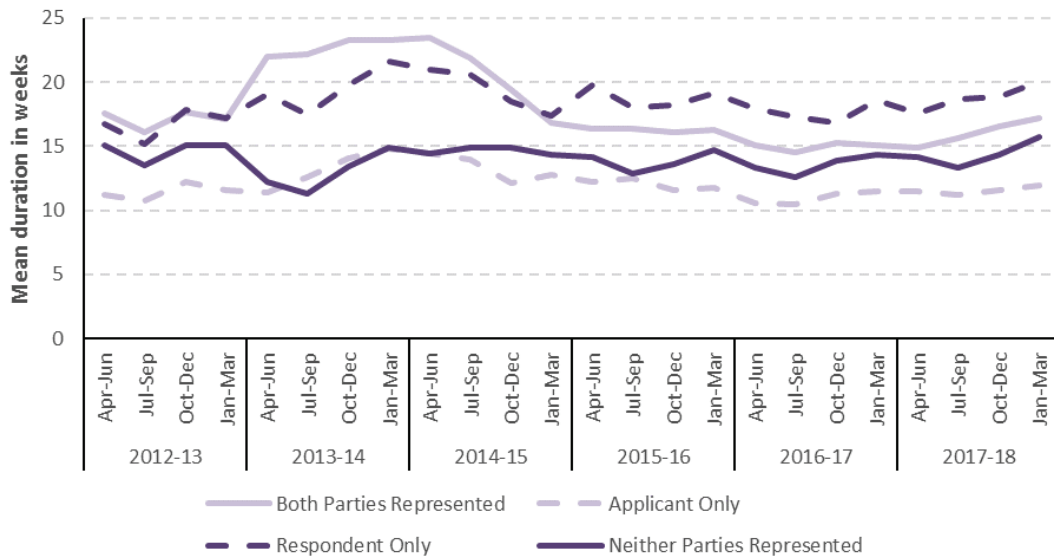


- 656. Cases where neither party is represented have historically shorter case durations – and fewer hearings – than where both parties are represented. This is likely to be due to the complexity of the cases being lower or the unrepresented litigants being unaware of certain measures that would lengthen the trial. Cases where both parties or the respondent only are represented have the longest case duration overall. Figure 97 shows this graphically. Note that these data show the time from the earliest application/petition date (or date the case was transferred in to the court if

¹⁷⁰ The following data is from the MoJ Family Court Statistics Quarterly Jan-March 2018, and that publication’s definition of private law is used. This is mainly children act cases and does not include divorces, ancillary relief, or domestic violence remedy orders. In this data self-representation is determined by the field ‘legal representation’ in the family court case management system being left blank. Therefore, this is only a proxy measure and parties without a recorded representative are not necessarily all self-representing litigants in person.

earlier) to the date of the earliest disposal/decreet nisi, and does not directly relate to court or judicial time.

Figure 97 – Private family law case duration by representation of parties



- 657. In 2014 it was estimated by the National Audit Office that the increase in litigants in person in family courts cost the Ministry of Justice £3.4 million.¹⁷¹
- 658. A study undertaken by the Ministry of Justice (involving academics such as Liz Trinder) found high levels of vulnerability in litigants in person, with around half of the litigants in person in the study being vulnerable in some way (with being a victim of domestic abuse and/or harassment being most prevalent), which exacerbated the difficulties associated with self-representation.¹⁷²
- 659. From their survey Resolution the majority of practitioners (98%) reported that their average client has either no or basic legal knowledge, and they (93%) are also seeing increased numbers of litigants in person. When asked which area of law they find themselves most often turning away prospective clients, 82% cited ‘child arrangement orders’, which would likely result in private children cases where both parents are unrepresented. Estimates from the 104 legal aid providers responding show that, at a minimum, they’ve had to turn away just under 10,000 people over the last 12 months.
- 660. As part of a report done by Amnesty International, a Personal Support Unit (PSU) Coordinator at the Royal Courts of Justice said, “*whilst our statistics show that only 10% of PSU clients consider themselves to have a health issue, in my experience it is much higher, especially people who have mental health problems*”.¹⁷³

¹⁷¹ National Audit Office. 2014. *Implementing reforms to civil legal aid*. See: <https://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>

¹⁷² Ministry of Justice Analytical Series. 2014. *Litigants in person in private family law cases*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380479/litigants-in-person-in-private-family-law-cases.pdf Footnote

¹⁷³ Amnesty International (see reference 52)

661. The Government is currently undertaking a £1bn investment in court reform, which aims to bring new technology into the courtroom and modern initiatives to the way justice is administered. The end goal is to build a modern system for administering justice which will benefit everyone who uses it, including those who are representing themselves.
662. The family area of the reform programme is focused on building on those improvements by making the system easier to understand and navigate, which in turn ensures that it better meets the needs of the people who use it and is more efficient as a result. This includes new technology for the family court to make the system simpler and more efficient for everyone; improvements to the court estate; and enhanced case officer/legal adviser functions to make best use of judges. Online services do not replace existing paper-based applications, but provide a quicker, easier route for many people. Both online services and existing paper-based applications are undergoing further development that will see new functions added to improve public access and efficiency. So far, the programme has already:
- i. Released online divorce nationally for both citizens and solicitors. Over 22,000 applications from citizens have been made, meaning 52% of divorce applications are received through the public beta channel. For online divorce applications, rejection rates because of errors in paper applications has reduced from 40% to 0.4%. Overall the time it takes to complete an application has reduced by 35 minutes on average.
 - ii. Released separate pilots for ‘financial remedy’ in divorce and probate with solicitors. The online probate service has received over 7,000 applications since the launch in July 2018 with very positive feedback. Of those who completed the online application, 93% of people said they were ‘satisfied’ or ‘very satisfied’ with the service.
 - iii. Completed activities to understand the needs of users and develop ideas to improve services for Civil Enforcement, Immigration and Asylum and Public Family Law (so that evidence can be submitted and shared electronically and cases can be managed more securely and effectively).
663. Moving forward, the family programme will:
- i. Start defining and testing digital working for family public law and adoption (as well as non-family matters, such as immigration and asylum), ensuring the court, parties and their representatives have access to the right information to support the court in deciding on outcomes.
 - ii. Extend systems for divorce (and probate), adding more features and making these systems available to everyone and across more of the court process. For more information on the support for litigants in person, please refer to the accompanying Action Plan.¹⁷⁴
664. Elsewhere across Government, The Department for Work and Pensions (DWP) has introduced the Reducing Parental Conflict Programme, which is supported by up to £39m of funding. The programme will build the evidence base for what works to reduce parental conflict by working with local authorities across England to help

¹⁷⁴ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

them to integrate services and approaches which address parental conflict into local provision.

665. As part of this programme, DWP has allocated £2.7m to a Reducing Parental Conflict Challenge Fund,¹⁷⁵ which will provide funding for innovative projects to gather learning on what works to reduce parental conflict through digital solutions, and for families where the children face other disadvantages. DWP is also interested in bids which include activity or interventions for separating or separated couples that reduce their need to use state funded systems such as the family court system or the child maintenance system.¹⁷⁶
666. Intervening early to help parents reduce conflict is likely to have a positive impact on a family's ability to communicate and co-parent effectively, potentially avoiding the need for families to access family law services further down the line. DWP's work to build the evidence base in this area will help local commissioners and departments across HMG understand which interventions work to reduce parental conflict, helping them to provide the right support for families when they need it.

Cross examination in person by alleged perpetrators of domestic abuse

667. Currently, it is possible for judges in family proceedings to use their general case management powers to provide alternatives to cross-examination in person of one party by another (for example, to prevent a perpetrator of abuse from directly cross-examining the victim of that abuse). However, judges do not currently have the power to appoint a legal representative to represent the person who is prevented from cross-examining in person and carry out the cross-examination in their place.
668. There is a lack of routinely collected data on the number of cases where a litigant in person can cross-examine a vulnerable party, or vice versa. However, the Ministry of Justice commissioned a study to explore the prevalence of these cases and how judges currently manage them.¹⁷⁷ The judges spoken to in the study relayed that they had a variety of powers to manage these cases, including facilitating the cross-examination by putting questions to the party themselves on behalf of the litigants in person or by using screens and video links.
669. However, confidence in managing these situations varied based on the judge's seniority and experience, and concerns were raised that these practices may lead to questions about their impartiality. Many judges saw this form of intervention as a last resort but felt that they had no choice when funding could not be found for representation, and the vulnerable party was unable to give their best evidence unless an alternative to cross-examination in person was provided.
670. There was also a consensus that a judge facilitating the cross-examination by putting questions to the witness on behalf of the litigant in person lengthened proceedings. This was due to the judicial time required to read questions, assess

¹⁷⁵ <https://www.gov.uk/government/news/27-million-fund-to-tackle-parental-conflict>

¹⁷⁶ This will depend on the nature and quality of the bids which DWP receives.

¹⁷⁷ Ministry of Justice Analytical Series. 2017. *Alleged perpetrators of abuse as litigants in person in private family law*. See: <https://www.gov.uk/government/publications/alleged-perpetrators-of-abuse-as-litigants-in-person-in-private-family-law>

their suitability or reword them for appropriateness, and to spend time reassuring the vulnerable party.

671. The draft Domestic Abuse Bill (discussed at paragraph 642) includes provisions to prohibit perpetrators of domestic and other forms of abuse from cross-examining their victims in person in the family courts, and to prevent victims from having to directly cross-examine their abusers.

Client equalities

672. Looking at LAA client diversity data for private family legal help, the proportion of the respective age categories has remained broadly similar, but the 25-34 age group has seen a slight increase to 40% in 2017-18 from 34% in 2012-13, which has then reduced the proportion of clients in the other age groups. The vast majority of clients are now female, and this proportion has increased from 64% in 2012-13 to 90% in 2017-18. In terms of ethnicity, there has been an increasing proportion of clients without reported data so firm conclusions are difficult, however in 2012-13 clients were 76% white, 8% from ethnic minority groups and 16% not reported, and in 2017-18 clients were 62% white, 14% from ethnic minority groups and 24% not reported. Lastly, in 2012-13 7% of clients declared a disability, while the figure was 9% in 2017-18, however the proportion of clients without reported data was 19% and 24% respectively.
673. For civil representation, the two main categories to consider are private law Children Act proceedings and financial provision proceedings.
674. For private law Children Act proceedings, the volume of under 18s has remained the same, but given the general fall in volumes the proportion has increased from 7% in 2012-13 to 36% in 2017-18. All other age groups have fallen. The proportion of female clients has increased from 54% in 2012-13 to 73% in 2017-18, although the volume of cases has in fact fallen. With regards to ethnicity, the large proportion of clients without reported data makes it hard to draw conclusions, but in 2012-13 72% were white, 8% were from ethnic minority groups and 20% were not reported, while in 2017-18 64% were white 12% were from ethnic minority groups and 24% were not reported. Lastly, the proportion of clients who declared a disability has remained steady at around 8% over the whole period, with about a quarter not reported.
675. The total volumes for financial provision cases is much lower, and this was the case before and after LASPO. The majority of clients are aged 35-54, and the age distribution has remained broadly the same since 2012-13. The proportion of female clients have increased from 72% in 2012-13 to 94% in 2017-18, although the total volumes have dropped. With regards to ethnicity, the proportion of clients from an ethnic minority background has increased from 11% in 2012-13 to 22% in 2017-18, although the ethnicity of clients was not reported in 18% of cases in 2012-13 and in 17% of cases in 2017-18. Lastly, the proportion of clients who declared a disability has increased from 15% in 2012-13 to 19% in 2017-18, although the proportion of clients without reported data was 21% and 15% in those years respectively.

Making significant savings to the cost of the scheme

676. Due to the fall in volumes in both litigation and mediations, the private family law scope changes have exceeded the estimated savings in the IA and have therefore achieved the objective of making significant savings to the cost of the scheme.

677. The IA estimated that the removal of most private family law proceedings from the scope of legal aid would reduce expenditure by £130m per year. This was independent of other changes made to eligibility and fees in this area. However, the increase in volumes of MIAM sessions, mediation starts, and help with family mediation was estimated to cost an additional £15m.
678. Figure 98 shows how the spend on private family law has changed from 2012-13 to 2017-18. Legal help has reduced in spend by £30m, which represents a reduction of 95% of the pre-LASPO spend. Although the £30m figure is less than the £50m anticipated in the IA, this is because of the decline in volumes before LASPO's implementation, and because the change in spend figures here do not reverse the fee changes. The scope changes removed a larger proportion of the spend than expected, falling 95% from 2012-13 to 2016-17, compared to the 80% expected in the IA.
679. For civil representation, the key issues are the unexpected fall in spend on domestic violence cases, as well as the much larger fall in private law Children Act cases.
680. The total spend reduction from the private family law scope change is estimated as £160m.

Figure 98: Breakdown of estimated private family spend for 2012-13 and 2017-18, and change in spend over this period

Level of service	Category	Baseline 2012-13	Current 2017-18	Change	Percentage change
Legal Help	Total private family	£30m	£2m	-£30m	-95%
	Combined family proceedings	<£0.25m	£0m	£0m	-100%
	Domestic violence	£40m	£30m	-£9m	-22%
Civil Representation	Financial provision	£7m	£0.5m	-£7m	-94%
	Other family proceedings	£5m	£0.5m	-£5m	-95%
	Private law Children Act proceedings	£130m	£30m	-£110m	-79%
	Total private family	£190m	£60m	-£130m	-68%
	Total	£220m	£60m	-£160m	-72%

681. Spend on both MIAMs and mediation is well below the level expected by LASPO. Spend has declined in proportion to volumes. Figure 99 shows the annual spend per year since the introduction of LASPO.

Figure 99: MIAM and Mediation start volume and closed case spend

Year	MIAMs		Mediation starts	
	Volume	Cost	Volume	Cost
2010-11	26,400	£6m	14,200	£7m
2011-12	31,300	£8m	15,400	£7m
2012-13	30,700	£8m	13,600	£6m
2013-14	13,400	£3m	8,400	£4m
2014-15	15,100	£4m	8,100	£3m
2015-16	13,300	£3m	8,800	£4m
2016-17	11,900	£3m	7,600	£3m
2017-18	10,500	£3m	6,300	£3m

682. The cost of 'Help with Family Mediation' was estimated to be around £8m per year in the LASPO IA. As shown in Figure 99, the actual cost has been much lower, around £15,000 in the year immediately after LASPO, rising to a maximum so far of £73,000 in 2015-16.

Delivering better overall value for money for the taxpayer

683. These policies have achieved economy – the scope reductions concerning legal aid for private family law proceedings have been one of the main causes of the £160m reduction in legal aid spend in this area.

684. Another key aim of this set of policies was to better target legal aid at those who need it most. To achieve this, 'gateways' for cases concerning domestic violence and child abuse were introduced alongside scope reductions. As outlined above, the results on both gateways and scope reductions have been mixed, although further action has been taken to ensure that legal aid is available for those most in need. However, as discussed above the policy has had limited success on discouraging unnecessary and adversarial litigation. Thus, this set of policies has proven only partially effective in achieving its aims and consequently the private family law scope changes have not entirely achieved better overall value for money for the taxpayer.

Chapter 2 – Civil and family eligibility changes

Policy summary

685. When an applicant applies for legal aid, not only must their matter be in scope of legal aid (or otherwise exceptional and applicable for ECF), they must also satisfy both a merits test and a means test. Broadly speaking, the merits test considers the likelihood of success of the case and whether it justifies the use of publicly funded legal advice and/or representation. The means test considers the applicant's financial situation and whether they qualify for legal aid.
686. Regulations under LASPO made four changes to the civil and family eligibility criteria, which will be discussed in turn.

Applying capital eligibility test to all legal aid applicants

687. To apply successfully for legal aid, applicants must pass a series of financial eligibility tests (though there are exemptions). The means test, for civil and family matters, has three different facets, although this does not mean that an applicant will be subject to all three. These are a test of the applicant's gross income,¹⁷⁸ disposable income¹⁷⁹ and disposable capital.¹⁸⁰ If any of the tests are failed, funding is refused. Depending on the results of the assessment, applicants can either receive government funding for all their legal costs, partial funding for a set proportion of disposable income up to the case cost or be ineligible for public funding. The rationale for financial eligibility testing is, as with benefit payments or other forms of government welfare, to target the provision of public funding at those in the greatest financial need.
688. The rules governing how and when financial eligibility testing should apply are set out in the Civil Legal Aid (Financial Resources and Payment for Services)

¹⁷⁸ Gross income means income under Regulation 21 before any deductions are made other than housing benefit and certain state benefits as specified within regulation 24. Regulation 21 states that the income of the individual must be taken to be:

- the gross amount the individual has earned or will earn;
- the gross amount of any entitlements that have accrued, or will accrue, to the individual; and
- any other gross sums from any source which the individual has received, or is likely to receive in cash or in kind, during the period of calculation.

¹⁷⁹ Disposable income is calculated by deducting living costs from the client's gross annual income. The client's living costs include:

- tax and National Insurance;
- annual housing costs;
- annual childcare costs;
- annual maintenance to former partners and any children;
- an adjusted annual living allowance.

¹⁸⁰ Regulation 30 provides that, unless exempted by the regulations, every capital resource belonging to the individual on the date of application is made must be included. This includes capital derived from a bank loan or borrowing facilities.

Regulations 2013.¹⁸¹ Before LASPO, if the legal aid applicant was in receipt of one or more of these benefits then they automatically passed all three tests (capital, gross income and disposable income) – they were essentially passported. The passporting benefits are:

- i. Income Support (IS);
- ii. Income-based Jobseeker's Allowance (JSA);
- iii. Income-related Employment and Support Allowance (ESA);
- iv. The guarantee credit element of State Pension Credit; and,
- v. Universal Credit.¹⁸²

689. Through regulations made under LASPO, the Coalition Government announced that it would abolish passporting for the capital test. Regulation 6 lists a series of benefit payments that remain passported. The removal of capital passporting requires all legal aid applicants in civil and family proceedings to undergo capital means testing to access legal aid, where there are no capital test exemptions.

Increasing Income Contributions for Contributory Clients

690. Clients (other than those in receipt of passported benefits) are assessed to determine whether they are financially eligible for civil legal aid based on their gross and disposable income. Their disposable income is also assessed to determine whether they are liable to pay monthly income contributions towards their legal costs. Certain types of legal assistance, such as Legal Help and Family Mediation, do not require contributions, and contributions are not required where funding is provided without reference to means.
691. Where legal aid clients are assessed as having a disposable monthly income above the set upper limit (£316), they are required to make a monthly payment to contribute towards their legal costs over the length of the case. Prior to LASPO, contributions varied up to 20% of the client's disposable income, with clients adjudged to have greater disposable incomes required to contribute a larger proportion. The rates were set such that a client contributed a maximum of 20% of disposable income, as assessed by the LAA.
692. Legal aid income contributions enable clients to have a direct financial interest in their case through contributing personally towards the costs of it, where they can afford to do so. Where clients contribute to the costs of their case, it was considered that they are more likely to approach litigation in a similar way to privately paying litigants, and unnecessary litigation may be deterred. The Coalition Government also considered income contributions as a way of offsetting the costs to the taxpayer of providing legal aid and help to ensure that funding is targeted at individuals who need it the most.
693. Under LASPO, the Coalition Government introduced an increase in contributions but decided to limit the increase to no more than 30% of a client's disposable income, and would apply a smaller increase to those with a lower income. The structure of

¹⁸¹ <http://www.legislation.gov.uk/uksi/2013/480/contents/made>

¹⁸² Universal Credit was added in April 2013

the new scheme otherwise remained the same, with tiered contributory rates such that a smaller proportion of income is paid by the least well off.

Capping the subject matter of dispute (SMOD) disregard at £100,000

694. Prior to LASPO, the value of any contested assets between parties was disregarded when assessing financial eligibility for civil legal aid. This affects individuals applying for legal aid typically in cases where a property is contested. To assess eligibility for 'Controlled Work' and Family Mediation, the entire value of the contested asset was disregarded; in civil representation cases, the amount which could be disregarded was capped at £100,000 (this was in addition to the mortgage and equity disregards). The disregard was first applied to the client's main dwelling (if in dispute), and then, if any of the £100,000 allowable remained, could be applied to other disputed property (if held) and then other disputed assets.
695. Following this policy change, the £100,000 cap was extended to all forms of civil legal services, not just civil representation. This means that when assessing financial eligibility of clients in 'Controlled Work' and Family Mediation, providers should disregard only the first £100,000 of the value of any assets in dispute.
696. By extending the scope of the £100,000 cap to all work, the Government stated it was addressing a deficiency in the current system which meant that parties who are contesting ownership of a very expensive property may be eligible for legal aid for advice. They believed that the policy would 'ensure that limited legal aid resources are not expended on those who own high value properties but instead are focussed on those most in need'. The Government was of the view that early resolution should be an objective of all cases and is not contingent on the availability of legal aid.
697. The cases most frequently affected by SMOD are family financial provision representation. The change only affected types of work where legal aid eligibility is determined by providers: therefore, no information on the value of contested assets was collected centrally which could be used to estimate its financial impact. The policy was largely based on the possibility that those with high value assets could receive legal aid at the initial advice stage. Post-LASPO, it is similarly not possible to assess the financial impact of this measure.

Removing legal aid in cases with 'borderline' prospects of success

698. As part of the eligibility test, the merits of a case must be considered and shown to meet certain criteria. There are different types of criteria depending on the nature of the proceedings and the type of legal aid sought, including some cases with no criteria at all or only a very low threshold to meet.
699. The sort of merits criteria that are used to determine whether someone should receive legal aid in civil and family cases include, for example:¹⁸³
- i. how likely it is for a case to be successful in court or other final hearing in the proceedings to which the application relates (prospects of success test);

¹⁸³ See: http://www.legislation.gov.uk/uksi/2013/104/pdfs/uksi_20130104_en.pdf

- ii. whether the potential benefit to be gained from the provision of civil legal services justifies the likely costs, such that a reasonable private paying individual would be prepared to start or continue the proceedings having regard to the prospects of success and all the other circumstances of the case (reasonable private paying individual test);
 - iii. whether the likely benefits of the proceedings to the individual and others justify the likely costs, having regard to the prospects of success and all the other circumstances of the case (proportionality test).
700. Prior to 27 January 2014, applications that were subject to the prospects of success test had to have, in general at least a 50% chance of success to receive legal aid funding for full representation. However, there was provision for certain cases with 'borderline' prospects of success to be funded.
701. Through regulations made under LASPO, the Coalition Government amended the criteria to remove those cases with borderline prospects of success. Legal aid was provided for cases assessed as having 'borderline' or 'poor' prospects of success (20% or more, but less than 50%) only where one of the following conditions were met:
- i. It was necessary for the Director to determine that the prospects of success criterion are met to prevent a breach of—
 - a. the individual's European Convention of Human Rights (ECHR) rights; or
 - b. any rights of the individual to the provision of legal services that are enforceable EU rights; or
702. Following a legal challenge and an appeal in 2016,¹⁸⁴ the Court of Appeal ruled that the original policy change was lawful. An additional exception was added to allow funding for certain cases with 'borderline' or 45-49% (marginal) prospects of success, subject in most cases to the case being either:
- i. of overwhelming importance to the individual; or
 - ii. of significant wider public interest; or
 - iii. the substance of the case relates to a breach of Convention rights.
703. Where a case has borderline prospects, various combinations of these sub-requirements apply depending on the proceeding and (as indicated below) in some areas no further requirements apply.

¹⁸⁴ IS v The Director of Legal Aid Casework and the Lord Chancellor (see reference 144)

To what extent did the LASPO civil and family eligibility changes meet their objectives?

Making significant savings to the cost of the scheme

704. The civil and family eligibility changes have successfully made significant savings to the cost of the scheme, although the savings are relatively small compared to the scope changes discussed in chapter 1. The two policies where a quantifiable estimate of the savings can be made are discussed below.

Applying capital eligibility test to all legal aid applicants

705. This policy has met the objective of making significant savings to the cost of the scheme. The application of the capital means test has saved an estimated £9m per annum.

706. The IA estimated that the policy would result in 'around £10m' worth of savings annually to the legal aid fund in steady state, because of fewer individuals qualifying for legal aid. The £10m was stated to represent 'around 4,000' clients with disposable capital between £8,000 and £16,000, who would previously have been passported but would become ineligible because of the policy changes.¹⁸⁵ In addition, the £10m figure also included 'around 2,000' previously passported clients who would have to pay a contribution from capital as they would be assessed as having capital between £3,000 and £8,000. This applies to certificated work only.

707. The £9m savings estimate includes two broad components:

- i. Savings relating to clients that make an application¹⁸⁶ for legal aid and either make a capital contribution, did not pursue legal aid funding because a contribution is required, or are refused legal aid because their capital exceeds the £8,000 capital threshold; and,
- ii. Savings relating to the potential cohort of legal aid applicants in the general population that were deterred from applying owing to the £8,000 capital threshold. This cohort is estimated using data from the LAA and the Department of Work and Pensions (DWP) to determine the approximate take-up of legal aid in the general population, and then applying the take-up to those that have passporting benefits and capital of more than £8,000, to determine the potential pool of applicants that are being deterred. It is assumed that some individuals seeking legal aid would be unaware whether they meet the threshold, but practitioners may be helping to provide clarity regarding their financial eligibility.

¹⁸⁵ Assumptions were made about the capital holdings of those in receipt of passporting benefits, using the 2010-11 version of the Family Resources Survey. The proportion of the general population on passporting benefits with between £8,000 and £16,000 assessed capital as derived from the survey was applied to the passported legal aid population to establish the number who would no longer receive legal aid following the change. This method assumed that the distribution of capital among the general population on passporting benefits was the same as the passported legal aid population - with no adjustment made for the potential differing situations of the two.

¹⁸⁶ This is based on 2017/18 data on all relevant civil representation certificates.

Increasing Income Contributions for Contributory Clients

708. This policy has made savings to legal aid expenditure, although not as significant as was estimated in the initial IA. The IA estimated that this policy would save £1m per annum, and in practice the policy has saved around £0.4m per annum.¹⁸⁷
709. For certificates closing in 2017-18, total income contributions were estimated to be around £1.3m.¹⁸⁸ Had the pre-LASPO income contribution rates stood, contributions would have been just under £1m, which as stated above represents a saving of around £0.4m.¹⁸⁹
710. This does not include the savings from those who have potentially been deterred from applying or accepting legal aid, due to the increased contributions. This saving was not quantifiable from the data available.

Discouraging unnecessary and adversarial litigation at public expense

711. The main civil and family eligibility policy change aimed at discouraging unnecessary publicly funded litigation has been unsuccessful. This is largely due to further policy changes which either reversed or limited the impact. This is now discussed in more detail.

Removing legal aid in cases with 'borderline' prospects of success

712. Due to changes to the policy, the removal of funding for cases with borderline prospects of success has not met this objective. The volume of cases in this bracket was intended to decline, however in practice the volume of these cases has increased.
713. Legal aid was initially withdrawn for cases with 'borderline' prospects in January 2014.¹⁹⁰ However, following this change, the prospects of success criteria were changed twice. The first one was following the High Court judgment in *IS v The Director of Legal Aid Casework and the Lord Chancellor* (July 2015),¹⁹¹ which had the effect of partially reversing the change made in January 2014. Following appeal

¹⁸⁷ Rounding convention has been adjusted in this section owing to the presentation of the estimates.

¹⁸⁸ The methodology for estimating the savings has involved taking, for each client, their last disposable income together with number of monthly contribution payments. The last disposable income will not always be reflective of actual income over the duration of a case. As a result, the analysis presented above provides only an indicative view of the impact of increasing the civil income contribution rates.

¹⁸⁹ This is based on around 2,100 certificates in 2017-18 which had complete data. It should be noted that the data in this area is of variable quality.

¹⁹⁰ Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2014 – See: <http://www.legislation.gov.uk/ukxi/2014/131/contents/made>

¹⁹¹ The judgment stated that 'the requirement that in all cases there must be an even or greater than even chance of success is unreasonable'. This judgment applied to the prospects of success test across the board and not just in applications under the ECF scheme, which was the subject of the IS litigation.

This led to the Civil Legal Aid (Merits Criteria) (Amendment) (No.2) Regulations 2015 (<https://www.legislation.gov.uk/ukdsi/2013/9780111106310/contents>), which allowed for the funding of cases with 'borderline' and 'poor' prospects of success where failure to do so would breach or risk breaching the applicant's rights under the European Convention of Human Rights or enforceable European Union law.

to the Court of Appeal in May 2016, the High Court decision was overturned and the Government introduced new criteria.¹⁹²

714. This change meant that the LAA would fund cases assessed as having borderline prospects (effectively undoing the change made in January 2014 despite it being held to be lawful) and ‘marginal’ prospects (effectively increasing entitlement to legal aid beyond that when LASPO Part 1 was implemented), where the case is of significant wider public interest or is a case with overwhelming importance to the individual. A borderline and marginal threshold also applies in certain other cases without needing to demonstrate overwhelming importance to the individual or significant wider public interest, such as domestic violence cases.
715. In the IA for the original change, it was estimated that approximately 100 fewer cases per year would be funded by removing ‘borderline’ cases from legal aid eligibility. This would save the legal aid fund an estimated £1m per year.¹⁹³ However, following the *IS* case and the subsequent changes, the estimated reduction of cases was revised to 50 cases per year, saving £0.5m per annum in steady state.
716. Figure 1 shows how the volume of applications, and the grant rate for civil cases with low prospects of success, has changed with the different merits test policy changes.¹⁹⁴

Figure 1: Application grant rate for cases whose prospects of success are recorded as less than 50%

Dates	Time Period ¹⁹⁵ Merits test in force	Family		Non-Family		Overall	
		Applications	Grant rate	Applications	Grant rate	Grant rate	Volume granted
27 th Jan 2013 to 27 th Jan 2014	N/A	220	48%	120	50%	49%	160
27 th July 2014 to 27 th July 2015	Original change	250	49%	60	52%	50%	160
27 th July 2015 to 22 nd July 2016	Post-HC judgement	210	72%	50	82%	74%	190
22 nd July 2016 to 22 nd July 2017	Current implementation	490	76%	100	88%	78%	450

¹⁹² Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2016 – See: <http://www.legislation.gov.uk/ukxi/2016/781/made>

¹⁹³ The figures were based on LAA closed case data showing the number of ‘borderline’ cases funded in 2011/12. These figures were adjusted to consider the reduced scope of the civil legal aid scheme as LASPO came into force.

¹⁹⁴ To make the relevant comparisons, all the categories with prospects of success with less than 50% chance of success, including borderline, but not including unclear have been taken into consideration. This is because the LAA data for prospects of success changed over time, with the categories recorded reflecting the definitions in the regulations in force at each time.

¹⁹⁵ These time periods are chosen to be one year immediately after the policy change, except the first period which is the year immediately before the initial change. The merits test change after the High Court judgement was implemented for slightly less than a year, so note that the third period shown is shorter.

717. As Figure 1 shows, during the period after the original implementation, the grant rate remained broadly unchanged when compared to prior the policy change. It was expected that there would have been a decrease in the grant rate during this period because of borderline cases no longer being eligible. However, it is possible that this is not being seen due to the small volumes involved.
718. Following the High Court judgment (27 July 2015 to 22 July 2016), the grant rate increased to 72% and 82% for Family and Non-Family respectively. As cases with prospects of success as low as poor could now receive funding if they met certain caveats, this increase was expected to happen.
719. The final period, following the appeal of the judgment saw the grant rate largely unchanged from the previous period, but raised from the position of the initial implementation, as anticipated in the IA. The final IA's estimate of an 80% grant rate for family cases with less than 50% prospect of success is close to what has been observed, however the non-family grant rate has been higher than the 20% to 25% expected - it was 87% for the year after the final policy change. Family applications also increased, suggesting that there was a behavioural response in this area, which the IA noted as a risk, but did not attempt to estimate.
720. The exact magnitude of the overall policy impact is difficult to determine, because of small volumes and the possibility of provider/client behavioural change. There has been an increase of 290 grants from the year before initial implementation, to the year after final implementation. This compares with the IA's expectation of a reduction of around 50 cases.

Targeting legal aid at those who need it most

721. Overall, the civil and eligibility changes have been successful in targeting legal aid at a smaller cohort of applicants, although it was asserted in the evidence gathering phase that this cohort is smaller than those individuals believed to be in need. However, further consideration is required to ensure that the means test continues to perform the function of serving to determine the allocation of public resources to those most in need in a fair manner.
722. The overall proportion of applications which are successfully granted for civil and family legal aid has not declined for civil representation since LASPO, although the volume of applications has fallen significantly (due to scope and eligibility changes). In fact, the civil representation grant rate has increased from 82% in 2010-11 to 93% in 2017-18. However, there are certain factors that need to be considered here. Firstly, this does not include those who no longer applied because of the LASPO changes, or because of a perception that legal aid is no longer applicable. In many instances, a provider may deter an application in the first instance, in the knowledge that it will be unsuccessful for whatever reason. Secondly, this statistic includes Special Children Act applications – the clear majority of which are successfully granted.
723. Therefore, the LASPO policies must be considered in more detail, to assess the extent to which the civil and family eligibility changes have targeted legal aid at those who need it most.

Applying capital eligibility test to all legal aid applicants

724. The application of the capital means test to all applicants has succeeded in targeting legal aid at a smaller cohort of people in most need. By examining the potential cohort of individuals who are now no longer applying, it is estimated that around 6,500 people (deemed to have sufficient means to fund their own representation) are no longer applying for civil legal aid each year.¹⁹⁶ This is explained in more detail above, at paragraph 707.
725. However, evidence submitted throughout the engagement phase has suggested that vulnerable defendants are no longer accessing or being delayed in accessing legal aid, due to having to pass another aspect of the eligibility test.
726. As part of its submission to this review, the Law Society commissioned further research on the affordability of proceedings for those that exceed the capital threshold and so are ineligible for legal aid. The report concluded that “*accessing secured credit to cover the cost of bringing legal proceedings is feasible for persons with capital in property who have average or above average incomes coupled with average expenditure. Similarly, older home owners (those aged over 55) with sufficient equity in their home and regardless of their income, may find equity release to be a practical option. Some low income home owners, however, may find it difficult or even impossible to access ‘standard’ mortgage products as a result of the mandatory affordability checks employed by lenders.*”¹⁹⁷ The report notes that these households may be able to turn to the sub-prime or adverse credit sector “*but the financial costs associated with this form of credit could place these households in a precarious financial position.*”¹⁹⁸ The report examined four hypothetical households to explore accessing secured credit, and recognised that there is a multitude of scenarios that might arise in respect of different households and a multitude of different lending criteria employed by lenders, which could impact upon the hypothetical scenarios in the research.
727. The HLPAs asserted: “*[the removal of capital passporting] has introduced an additional hurdle for vulnerable applicants who now have to prove that they are financially eligible for legal aid even when they have already been thoroughly means tested by another government department. Every individual who is seeking assistance now has to provide copies of bank statements for each bank account they hold, even dormant accounts, in order to access legal aid. It has also introduced an extra administrative burden on practitioners and on the LAA.*”¹⁹⁹
728. The Law Society also held focus groups with solicitors to discuss the impacts of LASPO, during which a number of solicitors voiced that there are some types of clients that it is “*difficult bordering on impossible to put a case forward for funding*”

¹⁹⁶ This excludes the small number of applicants that apply for legal aid and are rejected on the basis of the £8,000 capital threshold.

¹⁹⁷ Law Society and Dr Lisa Whitehouse. 2018. *Report on the affordability of legal proceedings for those who are ineligible for legal aid by reason of exceeding the capital threshold*; See Annex 6, p5: <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/ministry-of-justice-laspo-part-1-post-implementation-review-law-society-response/>

¹⁹⁸ Ibid. p5

¹⁹⁹ Housing Law Practitioners Association (see reference 102) p19.

due to the eligibility criteria.²⁰⁰ Although this doesn't relate directly to LASPO, this includes those self-employed (due to difficulties in providing proof of income), students (solicitors cited instances where claims for legal aid were rejected based on student loan funds in their accounts) and women subject to domestic violence (where their share in the value of the family home made them ineligible, despite having no prospect of accessing this capital). This was echoed in a survey Young Legal Aid Lawyers ran with its members, which found that obtaining proof of financial means was the most common problem for practitioners when applying for legal aid for their clients, particularly if the client is self-employed.²⁰¹

729. The 2017-18 equalities data²⁰² on civil representation cases highlights that for those applicants on passporting benefits that went through the capital tests around 80% of clients were female. Around 20% were from an ethnic minority background, and around 70% white. Just over 60% of the clients reported no disability while around 25% reported a disability, and for the remainder it was unknown. Almost 65% of clients were aged between 25-44, around 15% aged 45-54 and just under 15% aged 18–24 years old.²⁰³

Increasing Income Contributions for Contributory Clients

730. The policy of increasing income contributions was aimed at reducing the overall cost of the legal aid scheme, but it was also thought it could deter individuals from bringing speculative claims to court. However, evidence submitted throughout the evidence gathering phase (outlined below) raised concerns regarding the potential for the means test to deter people with modest incomes from bringing claims to court.
731. Research by Professor Donald Hirsch considered whether people required by the civil legal aid system to contribute to legal costs, based on their income and assets, could always afford to do so.²⁰⁴ Using the Minimum Income Standard,²⁰⁵ it found that *“the means testing of legal aid is set at a level that requires many people on low incomes to make contributions to legal costs that they could not afford while maintaining a socially acceptable standard of living.”* The report considers ‘affordability’ as having sufficient funds to cover such costs without having to make sacrifices in routine expenditures in a way that would be considered unreasonable. It

²⁰⁰ Law Society and BVA BDR. 2018. *Civil and criminal solicitors' views on LASPO*. See Annex 7, p12: <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/ministry-of-justice-laspo-part-1-post-implementation-review-law-society-response/>

²⁰¹ Young Legal Aid Lawyers (see reference 83)

²⁰² The equalities percentages are calculated as a share of the total which includes cases where the equalities information is unknown. Also, the percentages have been rounded to reflect the uncertainty in the underlying data.

²⁰³ It is worth noting that the estimated additional income contributions for 2017/18 do not include an assessment of the potential impact of clients that may have been deterred from applying owing to the higher contribution rates. It has not been possible to quantify this pool and therefore it is excluded from the analysis.

²⁰⁴ Law Society and Professor Donald Hirsch. 2018. *Priced out of justice? Means testing legal aid and making ends meet*. See Annex 4, p14: <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/ministry-of-justice-laspo-part-1-post-implementation-review-law-society-response/>

²⁰⁵ For more information on the Minimum Income Standard, see: <https://www.jrf.org.uk/report/minimum-income-standard-uk-2018>

is worth noting that this standard does not have official status and includes expenditure on activities that some may not view as essential, such as the consumption of alcohol and gifts/celebrations.

732. The Law Society commissioned further research into the impact of the contribution threshold for victims of domestic abuse and violence, and examined data from callers to the National Centre for Domestic Violence helpline. According to the study, 20% of the 2,206 callers who were eligible to apply for a domestic violence injunction did not proceed with their application because they could not afford the contributions, of which 16% could not afford to pay contributions triggered by their level of disposable income, and 4% could not afford the contributions due to their capital assets.²⁰⁶ Eligibility limits are waived for proceedings of this type, so that contributions may be higher than in other cases but based on much higher incomes. Moreover, the Government have announced a draft Domestic Abuse Bill which will further raise awareness of domestic abuse, enhance the safety of victims and bring more perpetrators to justice. More details are provided in chapter 1.
733. Women's Aid report that they hear regularly of women who are turning to "*litigation loans in order to pay legal fees, there has been an increase in the use of McKenzie Friends, and we have seen a rise in litigants in person in the courts.*"²⁰⁷ Litigants in person have been discussed in more detail in chapter 1.
734. The LASPO IA stated that if individuals have been deterred from accessing legal aid due to their inability to afford the income contributions, they may address their legal problem in a different way as a result. Examples included representing themselves at court, paying privately, resolving their legal issue out of court or not tackling the issue at all. It also noted that there may be an impact on case outcomes, for example if the changes led to more individuals litigating in person.
735. As people access legal support and advice in different ways it is possible that some people, although not eligible for legal aid are still accessing the justice system. The latest Legal Problem and Resolution Survey,²⁰⁸ published in 2017 by the Ministry of Justice, suggests that over half of adults tried to resolve their issue without legal or professional help or use of a formal process, 27% used legal or professional help, and 17% used a formal process. These handling strategies vary according to respondent characteristics, the perceived seriousness of the issue and the level of expertise needed to understand and solve the issue. When asked why they did not contact a solicitor or barrister, 28% said it was because they did not need their help or knew enough themselves, 22% said the problem was not important enough, 20% said their problem was resolved without need for their advice, 16% said cost and 19% gave other reasons.
736. The equalities data for civil representation contribution cases can be used to consider the different demographic background of the cohorts of people using legal aid, and those have been impacted by this change. In 2009-10 (the baseline year for the policy), around 60% of civil representation clients contributing were female and

²⁰⁶ Law Society. See: <https://www.lawsociety.org.uk/support-services/research-trends/impact-of-legal-aid-thresholds-for-victims-of-domestic-violence/>

²⁰⁷ Rights of Women, 2018. *Evidence submission to this review*. See: <http://rightsofwomen.org.uk/wp-content/uploads/2018/10/Submission-LASPO-PIR-final-Sept-2018.pdf>

²⁰⁸ Legal Problem and Resolution Survey (see reference 117)

around 10% of clients were from an ethnic minority background. The proportion of clients who declared a disability was around 5%, although there was a large proportion of clients who did not share this information. In 2017-18, around 80% of clients were female and the proportion of clients from an ethnic minority background was around 25%. The proportion of clients who declared a disability is now around 15%. The age distribution of clients has broadly remained the same.²⁰⁹ As such, it can be said that the policy has had a more significant impact on women and individuals from an ethnic minority background.

Delivering better overall value for money for the taxpayer

737. When taken together, the four policies have saved a total of around £10m. As such, these policies have achieved some degree of economy, having delivered considerable overall savings.
738. The removal of legal aid in cases with borderline prospects of success was aimed at discouraging unnecessary and adversarial litigation at the public expense. However, it was subsequently amended and legal aid provision has risen beyond the initial estimation in the IA. Therefore, this policy has been somewhat ineffective.
739. These policies have achieved overall spend reductions, and have succeeded in providing access to legal aid to a smaller cohort of people – suggesting economy and effectiveness. However, some stakeholders have suggested individuals who cannot reasonably afford private rates are now ineligible, and the increased income contributions may now be deterring individuals from applying. If this is accepted, it cannot be concluded that equity has been achieved.
740. As outlined in the introduction (paragraphs 107-113), a full assessment of the equity and efficiency effects of these policies, on top of economy and effectiveness, is needed to establish whether these policies represent value for money. Unfortunately, this analysis not been possible due to lack of appropriate data.
741. To robustly assess whether these policies represent value for money to the taxpayer and across government as a whole, would require being able to identify counterfactual outcomes and more detailed measures of the costs and benefits of the policies. Due to data limitations, such thorough analysis has not been possible. Instead, we have had to rely on specific pieces of research, which are variable in their robustness, and stakeholder submissions to draw any conclusions. Thus, more research is required.
742. In response to this, we have set out in the Action Plan²¹⁰ how we intend to move forward with regard to civil and family eligibility. We will conduct a review into the thresholds for legal aid entitlement, and their interaction with the wider criteria. Whilst the review is ongoing we will continue with current arrangements to passport

²⁰⁹ The equalities percentages are calculated as a share of the total which includes cases where the equalities information was unknown. For 2017/18, equalities data was only assessed for cases with complete financial data i.e. cases considered in the savings assessment whereas the data for 2009/10 covers all cases. Also, the data for 2017/18 contains more complete equalities information when compared with the data for 2009/10. As a result, this comparison should be used with caution. Finally, the percentages have been rounded to reflect the uncertainty in the underlying data.

²¹⁰ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

all recipients of universal credit through the means test. Furthermore, we will bring forward proposals for extending eligibility for non-means tested legal aid for parents, or those with parental responsibility, who wish to oppose applications for placement orders or adoption orders in public family law proceedings.

Chapter 3 – Civil and family fee changes

Policy Summary

743. Work done by providers in civil and family cases is remunerated at hourly rates or a series of standard fees. There is a range of different fees/rates payable depending on the type of case, the nature of the work and the venue of proceedings. For example, in family care proceedings solicitors are paid different fees depending on the number of parties represented, whether the party is an adult or a child, the geographical location of the provider and the tier of judiciary hearing the case.
744. Where a case is particularly complex, the fee schemes may provide for additional payments. Where a case is paid on hourly rates the rates can be ‘enhanced’ (i.e. increased) on assessment, based on a range of factors.²¹¹ The use of enhancements is discussed below. Where standard fees are in operation, ‘escape fees’ can be used in certain situations. This is where the actual costs exceed the standard fee by a set amount, so can be paid on hourly rates instead.
745. Prior to LASPO, the hourly rates and standard fees paid were set out in the Community Legal Service (Funding) Order 2007 (and subsequent amendments), but they are now set out in the remuneration regulations.²¹² In light of the need to consider further opportunities for efficiency savings the Coalition Government proposed to only make relatively simple changes to the fees paid in civil and family proceedings, rather than to undertake complete restructuring of fees. The changes were made in the LAR and LAT packages of reforms, as outlined in the introduction.

²¹¹ Enhancements only apply in respect of certificated work

²¹² The Civil Legal Aid (Remuneration) Regulations 2013 make provision about the payment of remuneration by the Lord Chancellor to persons who provide civil legal services under arrangements made for the purposes of LASPO.

LAR fee changes

Reducing all fees paid in civil and family matters by 10%

746. The most significant LAR fee change was the 10% reduction of all fees, except for family mediation. This level of fee reduction was an attempt to draw a balance between the need to reduce spending, and to encourage providers to be efficient and innovative and ensuring that clients can continue to access legally aided services. The reduction applied to both prescribed hourly rates and to all civil and family standard and graduated fees. It also applied to Very High Costs Cases, which are paid under hourly rates or 'events rates' models, but it did not apply to 'risk rates'.²¹³

Codifying barrister rates in civil (non-family) cases

747. Prior to codification, payments to barristers were 'at large', subject only to reasonableness/proportionality. The Coalition Government codified barrister rates to provide greater clarity and control. Although the pre-codified rates for barristers were already significantly higher than those for solicitors, this was balanced to an extent by the fact that enhancements were not available.

748. The rates for Queen's Counsel (QC) in the Supreme Court remained at higher rates than those in the High Court or Court of Appeal, to reflect the novelty and complexity of the cases.

749. The rates are now set out in the Civil Legal Aid (Remuneration) (Amendment) Regulations 2013.²¹⁴

Capping enhancements to hourly rates payable to solicitors in civil cases

750. Enhancements are used to ensure fees recognise a range of factors, including the skill, competence, expertise and speed of the work, and complexity of the case. Typically, enhancements in civil (non-family) cases were between 30% and 50% of the standard rates. The Coalition Government sought to make payments more predictable and bring costs under greater control. To this end, it was proposed that the enhancements which could be paid to solicitors should be capped at 100% for cases in the Upper Tribunal, High Court, Court of Appeal and Supreme Court and 50% for all other courts. Enhancements were capped prior to LASPO, but at a higher limit.

751. In family cases, there were minimum enhancements of 15% for members of certain panels²¹⁵ and the maximum allowable enhancement at 100%. The Coalition Government capped and defined enhancements in family cases in the same way as for civil (non-family cases), set out above.

²¹³ Fees paid at risk rates are a means of sharing the risk between the LAA and provider, in cases where the provider appears likely to be able to recover costs.

²¹⁴ See: www.legislation.gov.uk/ukxi/2013/2877/pdfs/ukxiem_20132877_en.pdf

²¹⁵ These panels are:

- The Law Society's Family Law Panel (Advanced)
- The Resolution Accredited Specialist Panel
- The Law Society's Children Panel (in respect of proceedings relating to children)

752. It was considered that this would provide sufficient flexibility to allow appropriate enhancements in a complex case, while maintaining consistency between the fees mandated and the actual fees paid. The Coalition Government acknowledged that this change would provide negligible savings, but considered this change was still important to ensure that there were appropriate controls in place to avoid future cost pressures. As such, the rates were capped by The Community Legal Service (Funding) (Amendment No.2) Order 2011.²¹⁶

Reduction in the use of QCs in family proceedings

753. In line with the Coalition Government's attempts to better control spending, the use of QCs in family proceedings was limited so that they could only be used in complex, novel or exceptional cases which require that level of skill, expertise and experience, as set out in the guidance. It was considered that such an expensive and specialised resource should only be provided at public expense where it was absolutely necessary. Therefore, a two-stage test was introduced:

- i. the case involves substantial, novel or complex issues of law or fact which could only be adequately presented by a QC; and,
- ii. either the opposing party has engaged a QC or senior Treasury Counsel, or the case is exceptional for some other reason.

²¹⁶ See: <http://www.legislation.gov.uk/uksi/2011/2066/contents/made>

LAT fee changes

Reducing the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme

754. The Care Proceedings Graduated Fee Scheme²¹⁷ covers all care and supervision proceedings under s31 of the Children Act 1989.²¹⁸ The Scheme pays solicitors a fixed fee for representation (regardless of the amount of work involved or the number of hearings in the case, unless the actual cost exceeds an escape threshold).
755. These fees were originally based on the amount providers were previously claiming under hourly rates. The Coalition Government sought to more closely align the fees with the trends in the Family Justice Reforms²¹⁹, which aimed to drive down the case duration of care cases. The reforms were implemented through the Children and Families Act 2014.²²⁰ The Act reduced the commissioning of unnecessary expert reports and reduced the number of hearings per case, which in turn could reduce the workload for solicitors.
756. To reflect the declining case lengths and reduced workload, the Coalition Government reduced the representation fee paid to solicitors in public family law cases by 10%. The reduction would apply to fixed fees and hourly rates (where used).

Harmonisation of civil (non-family) barrister fees so that all advocates are paid the same in jurisdictions up to and including the High Court

757. Prior to the LAT reforms, barristers in civil (non-family) cases were remunerated at different rates depending on i) type of work they were engaged in or ii) if they were self-employed or not. The difference in rate [between employed and self-employed barristers] was sometimes up to 50% depending on jurisdiction.
758. To rectify this issue the Coalition Government changed remuneration for self-employed barristers to harmonise payment regardless of jurisdiction. This did not apply to the Court of Appeal, Supreme Court or to QCs, following the LAR reforms, as the nature of these proceedings/advocates was considered to be sufficiently different to justify different rates.

Removing the 35% fee uplift in immigration and asylum Upper Tribunal appeals

759. Providers previously received uplifted legal aid rates of payment for immigration and asylum Upper Tribunal appeals. The higher rate was put in place under an old scheme of retrospective funding where work on the whole appeal was 'at risk', and was intended to compensate providers for carrying the risk of non-payment throughout a case. Under the scheme in place at the time of LAT, only work on permission applications was 'at risk' and payment was made after a successful

²¹⁷ More information can be found at p26 of the following:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737628/Civil_Finance_Electronic_Handbook_v2_.6_.pdf

²¹⁸ See: <https://www.legislation.gov.uk/ukpga/1989/41/contents>

²¹⁹ See: <https://www.gov.uk/government/news/family-justice-reforms-to-benefit-children>

²²⁰ See: <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

application. However, the higher rate of payment still applied. Given the different arrangements in place since the higher rate was introduced, it was deemed that continued payment of the uplift was not justified.

Judicial Review fee change

Limiting remuneration for pre-permission work on judicial reviews to cases where permission is granted

760. In judicial review cases an applicant requires permission from the High Court, or where appropriate, the Upper Tribunal, to proceed with their case. The court will only grant permission if it thinks the case is 'arguable' and therefore merits full investigation by the court. Most permission decisions are made on consideration of the papers. If the High Court refuses permission, the applicant can seek a 'renewal' at an oral hearing to reconsider their application for permission. If the court still refuses permission, the applicant can appeal to the Court of Appeal for reconsideration of the permission decision.
761. The Coalition Government determined that providers should only be paid for work carried out on an application for judicial review (including a request for reconsideration of the application at a hearing, the renewal hearing or an onward permission appeal to the Court of Appeal), if permission is granted by the court, subject to a discretion to pay provided that permission had not been refused.
762. Legal aid would continue to be paid in the same way for the earlier stages of a case – to investigate the strength of a claim, for example, and to engage in pre-action correspondence aimed at avoiding proceedings, as is generally required by the Pre-Action Protocol for Judicial Review. The work involved in an application for interim relief, which, in its nature, is likely to be required on an urgent basis and the likelihood of success is more unpredictable, would also be payable in any event. Where a permission application was made the claimant would continue to be technically in receipt of legal aid for the permission stage of the case, and so would still only be personally at risk of paying costs if the permission application were unsuccessful, to the limited extent permitted by the legal aid cost protection regime. The provider would also be considered still to have a legal aid 'retainer' in to be able to recover market rate costs from the opponent where these were ordered or agreed.
763. The measure was first consulted upon as part of the LAT reforms, but was implemented separately alongside other judicial review reforms. The original statutory instrument preventing payment on judicial review permission applications came in to effect on 22nd April 2014.²²¹ Payment on the permission stage was to be removed unless:
- i. Permission is given.
 - ii. Permission is neither given nor refused, and the Lord Chancellor considers it reasonable to make payment, taking into account, in particular –
 - a. The reason why the provider did not obtain a costs order or costs agreement in favour of the legally aided person;
 - b. The extent to which, and the reason why, the legally aided person obtained the outcome sought in the proceedings, and

²²¹ See: http://www.legislation.gov.uk/uksi/2015/898/pdfs/uksi_20150898_en.pdf

- c. The strength of the application for permission at the time it was filed, based on the law and on the facts which the provider knew or ought to have known at that time.

764. However, the SI was quashed on 19 March 2015 following the case *Ben Hoare Bell and others v the Lord Chancellor*.²²² The judgment concluded that were some situations in which the effect of the policy was not rationally connected to its purpose. The Government then reintroduced the policy with additional circumstances for payment on 27 March 2015.²²³ These additional circumstances are:

- i. The defendant withdraws the decision to which the application for judicial review relates and the withdrawal results in the court—
 - a. Refusing permission to bring judicial review proceedings; or,
 - b. Neither refusing nor giving permission;
- ii. The court orders an oral hearing to consider whether to give permission to bring judicial review proceedings; or,
- iii. The court orders a rolled-up hearing.

²²² *Ben Hoare Bell and others v the Lord Chancellor* [2015] EWHC 523 (Admin) - <http://www.bailii.org/ew/cases/EWHC/Admin/2015/523.html>

²²³ See: http://www.legislation.gov.uk/uksi/2015/898/pdfs/uksi_20150898_en.pdf

To what extent did the LASPO fee changes achieve its objectives?

Methodology

765. The savings estimates in this chapter are an estimate of how much the policies saved in 2017-18, if the fee changes were reversed. The estimated saving is therefore the difference between the current spend and what the spend would have been, had the fee changes not been introduced. In this chapter disbursements have been excluded, so the costs represent the fees received by legal professionals from the legal aid fund. All fees include VAT.
766. Where trends over time in the average fees paid are shown, these are based on the start date of the cases. This is because the start date of the case determines the fee payable – even if the case lasts several years, the provider will receive the fee that was applied at the time when the case started. For some areas of law, long running cases may not have finished and if these are more expensive than the average costs, there may be an underestimation of the true average costs arising out of a given period. The risk of underestimating the average costs has been minimised by reporting only where enough time has passed for most cases to have completed, and (where specified) removing categories of cases where the average length is too long to assess the impact of the policy at this stage.
767. In this chapter the charts, where relevant, have the implementation date of the fee change marked by a purple dashed line and the implementation date of LASPO marked by a red dashed line.

Making significant savings to the cost of the scheme

768. Overall, the civil and family fee changes achieved the objective of making significant savings to the cost of the scheme. A summary of the savings can be found at paragraph 789. Ultimately the fee changes exceeded the estimations in both the LAR and LAT IAs, due to an increase in both average costs and volumes. The impact of several of the fee changes will now be considered in turn.

Reducing all fees paid in civil and family matters by 10% - LAR

769. The 10% fee reduction across the board was aimed at making significant savings to the cost of the scheme. Due to the differing nature of legal help and civil representation the two have been considered independently here.

Legal help savings

770. When considering the impact of the 10% fee reduction on legal help fees, several caveats are required. Firstly, some categories of law have been excluded, as the cases generally last too long and we cannot consider the impact of the fee change yet. For instance, personal injury cases last too long to be able to reliably identify any impact of the LAR fee changes, as only 40% of cases have closed within 5 years. However, since there have been fewer than 30 matter starts in the five years since LASPO, this will have limited impact on the following analysis.
771. Secondly, the scope changes introduced in 2013 (considered in detail in chapter 1) has also had an impact on the average fee for many civil and family matters. By removing various areas from the scope of legal aid it has altered the case mix, and generally the most complex (and hence expensive) cases remain in case. As such, the average case cost has increased (e.g. Figure 7).

772. Therefore, this analysis has focused on the cases immediately after the fee change, before the scope change had taken full effect. For legal help, the average fee has reduced by 17% in family cases and 6% in civil (non-family) cases - leading to a total 8% reduction.²²⁴

773. Figure 1 highlights the fee change impact and the scope change separately. As the 'scope change impact' column highlights, the average fee for legal help in both civil and family matters increased significantly by 2013-14 – by 54% and 69% respectively.

Figure 1 – average fees paid in the 12 months before and after the LAR fee change and the scope change²²⁵

Category of Law	Fee change impact			Scope change impact		
	Starts from 2011-12	Average fee after change	Change from previous	Starts from 2013-14	Average fee 2013-14	Change from 2012-13
Private law family		£170	-20%		£160	-2%
Public law family		£310	-8%		£390	+22%
Total family	210,000 ²²⁶	£180	-17%	38,200	£310	+69%
Actions against the police etc.	4,000	£580	-6%	2,200	£770	+33%
Clinical negligence	3,600	£320	-9%	110	£350	+8%
Community care	6,200	£500	-4%	3,300	£570	+5%
Consumer	550	£240	-4%	0		
Debt	76,900	£220	-9%	290	£320	+45%
Education	1,200	£840	+3%	10 ²²⁷		
Employment	9,700	£390	-9%	10		
Housing	81,200	£230	-7%	35,500	£270	+16%
Immigration-asylum	60,800 ²²⁸	£640	-10%	28,200	£640	+1%
Immigration-non-asylum		£420	-2%		£630	+46%
Mental health	39,600	£750	-11%	42,200	£760	+1%
Miscellaneous	890	£250	+30%	200	£960	+162%
Public law	1,600	£500	-13%	1,100	£500	+2%
Welfare benefits	83,500	£200	-8%	160	£290	+39%
Total non-family	370,000	£360	-7%	115,000	£590	+54%
Total	580,000	£310	-8%	150,000	£530	+69%

²²⁴ The change in average fee paid is different to the change in fee, because of natural variations in the workload and background trends before the fee change.

²²⁵ The fee is determined by when the matter starts, but the cost is not available until the case is finished, often some time later. Therefore, Figure 5 considers claims arising out of matter starts made in the years specified. This provides the most appropriate cases immediately before and after the fee change and the scope change, to better isolate the impact that the relevant change could have had and exclude as far as possible any external drives.

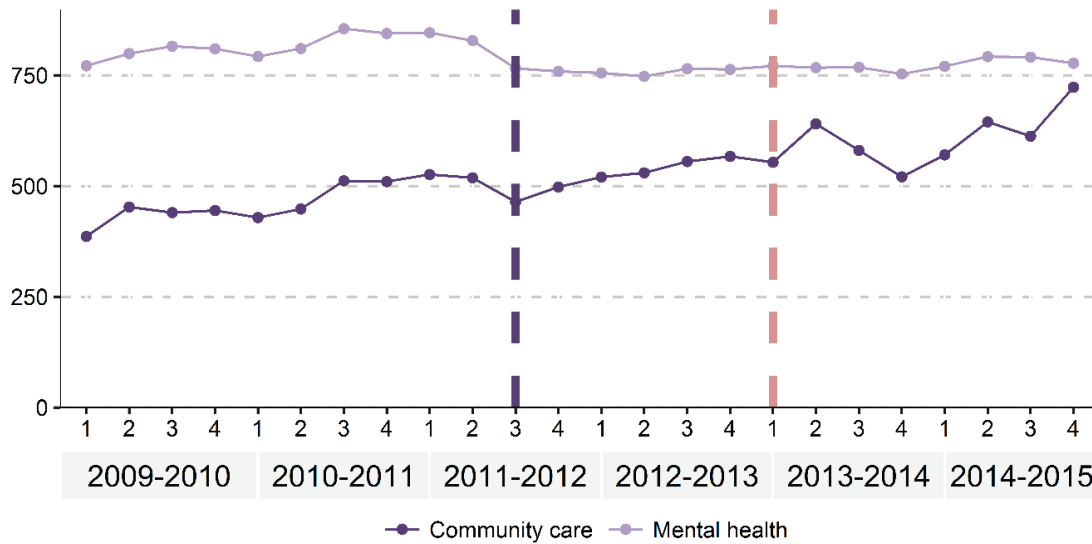
²²⁶ Family matter starts are not split into public/private at the matter start

²²⁷ Average spend data not available for this category since none of the matter starts are recorded to have submitted a final bill

²²⁸ Immigration is not split into asylum/non-asylum at the matter start

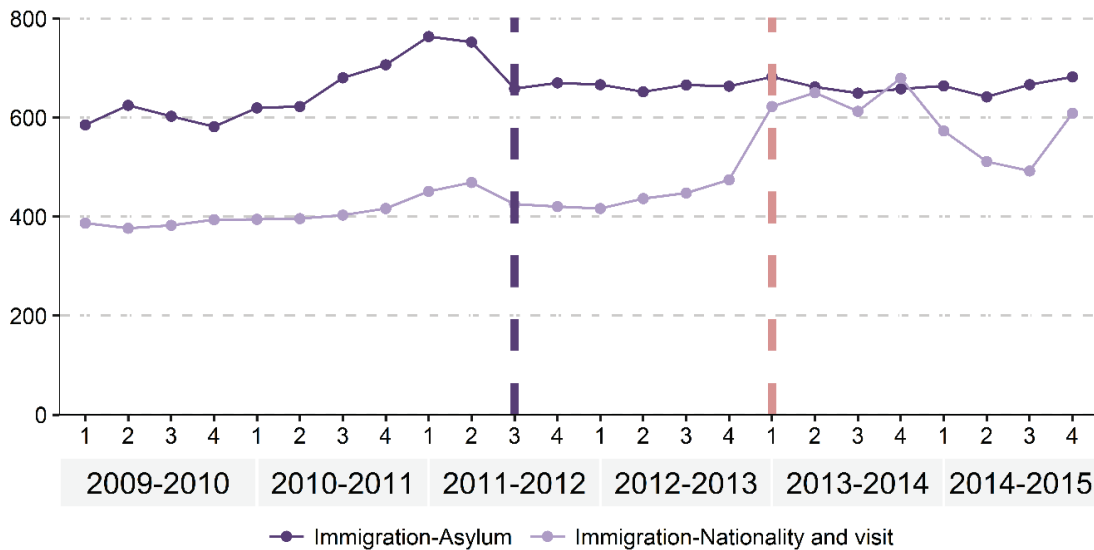
774. When considering the impact of the LAR fee changes on the various areas of law there are often different drivers for each, some of which are outside the control of legal aid. For example, Figure 2 shows two areas of law that were not impacted by scope changes and yet the trends are distinctly different.

Figure 2 – average fees for community care and mental health legal help, by matter start date



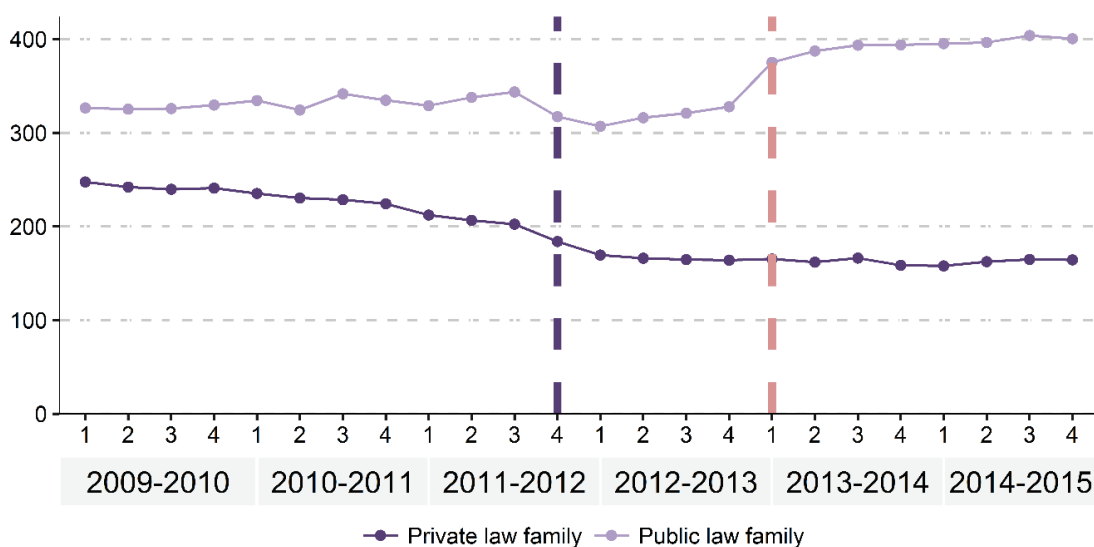
775. For most areas, the scope changes have caused a rise in average costs as the remaining cases tend to be the more expensive cases. Immigration (Figure 3) is a prime example of this – for legal help in asylum cases (which remained in scope) the average fee is clearly lowered by the LAR changes and remains in a fairly steady state since. For legal help in nationality and visit cases (which were largely removed from scope) the fee change is again noticeable, but the average fee increases dramatically, as only the most expensive cases remain.

Figure 3 – average fees for immigration legal help, by matter start date



776. The average fee for legal help in family cases is another example of external drivers. In both private and public family law cases the 10% fee change is evident, however the developments following LAR are different. For public family law matters the average fee has increased, which is expected to be largely due to external drivers – something that the Coalition Government attempted to address as part of the LAT package of reforms. There could be a number of factors driving this change, such as the Public Law Outline (PLO) which was introduced in 2013 and updated in 2014. The PLO is a set of rules which provide guidance to social workers, including encouraging social workers to hold a ‘pre-proceedings’ meeting with the parents to discuss concerns. This may have had an impact on increases to the volume of legal aid.

Figure 4 – average fees for family legal help, by matter start date



777. It is difficult to provide a concrete figure of how much the 10% fee reduction has saved on legal help given the various other factors involved. However, by modelling the reversal of the fee reduction on 2017-18 spend, it can be estimated that the fee reduction has saved a total of £8m per annum for legal help - £1m from family cases and £7m from civil (non-family) cases. The £1m savings from family cases aligns with the estimated savings from the IA, but the estimated £7m savings from civil (non-family) cases is less than the original £10m estimation. This is due to the scope changes reducing legal help volumes more than anticipated, so there were fewer cases on which to make savings from the fee reduction.

Civil representation savings

778. Similar to legal help, the analysis of the impact of LAR fee changes on civil and family representation fee requires caveating. Firstly, for civil representation the length of the case under a certificate is, generally, much longer than legal help, so it is more difficult to draw conclusions about changes which have happened recently. As such, clinical negligence and personal injury cases have been excluded, because the impact of the fee reduction is yet to be witnessed.
779. Secondly, with civil representation costs there is the added complexity of costs being awarded from the opponent in both a partial or full manner. Cases involving zero cost to the LAA have been excluded. Lastly, there are a small number of high cost cases that display large volatility of average fees and to include them would skew the trends that have developed since the LAR package of reforms. To this end, they have been shown separately in this chapter.
780. Figure 5 shows that the variation in the impact of the fee reduction across different categories of law, and between normal and high cost cases, with more time series detail shown in Figures 6 and 7. The overall reduction in average fee observed was a 9% reduction for civil (non-family) and a 14% for family cases. This is in line with the 10% expected, although the family reduction is larger than anticipated because of the rise in average fee in the three quarters prior to the fee reduction, shown in Figure 7.

Figure 5 – effects on average fee paid in the 12 months before and after the fee change

Category of Law	Certificates granted from applications in 2011-12	Change in average fee (normal cases)	Change in average fee (high cost cases)	Change in average (overall)
Combined family proceedings	10	+39%	N/A	+39%
Domestic violence	16,200	-3%	-13%	-6%
Other public law Children Act proceedings	6,900	-15%	-5%	-18%
Private law Children Act proceedings	47,900	-10%	+1%	-10%
Special Children Act proceedings	44,700	-11%	-2%	-18%
Total family	115,000	-9%	-3%	-14%
Actions against the police etc.	1,100	+11%	-9%	+12%
Community care	750	-1%	+13%	-2%
Debt	230	-20%	+628%	-2%
Education	120	-16%	-15%	-15%
Employment	60	+19%	N/A	-1%
Housing	11,800	-8%	-20%	-8%
Immigration	2,500	+4%	-36%	-5%
Mental health	600	+5%	-14%	-11%
Miscellaneous	370	-16%	-20%	-15%
Public law	1,700	-3%	-29%	-23%
Welfare benefits	20	-36%	N/A	-36%
Total civil	19,300	-5%	-19%	-9%
Total civil and family	135,000	-8%	-6%	-14%

Figure 6 – average fees for civil (non-family) certificated work (excluding mental health and high cost cases), by matter start date

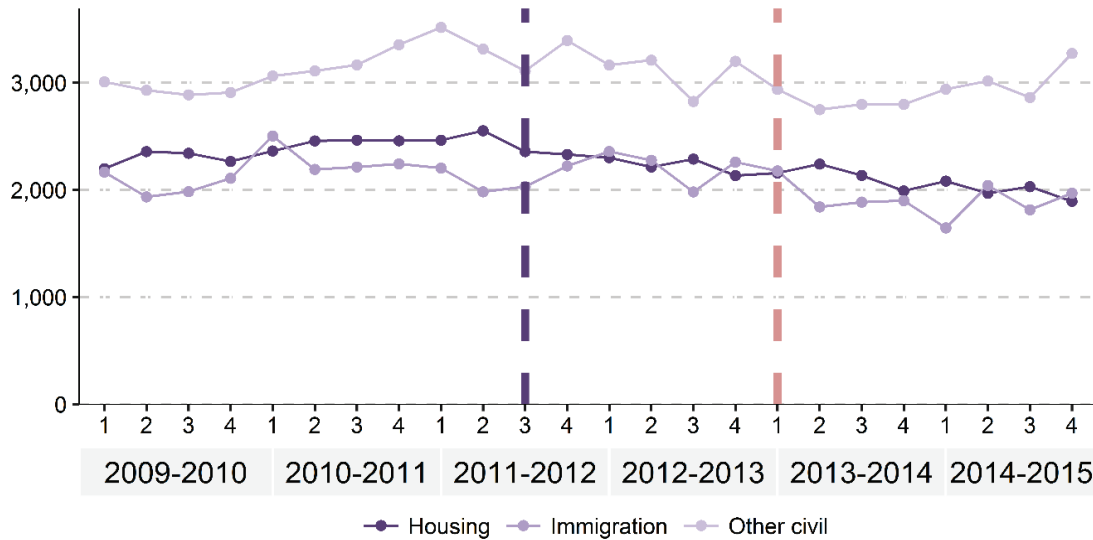


Figure 7 – average fees for family certificated work (excluding high cost cases), by matter start date



781. In terms of how much the 10% fee reduction has saved the legal aid fund on civil representation, it has been estimated based on modelling of the pre-LAR closed case spend in 2017-18. With that in mind, it can be estimated that a £60m saving in family cases and a £6m saving in civil (non-family) cases has been achieved. The £60m saving in family cases exceeds the initial estimation in the IA, which was set at £30m per annum. This is largely due to the steep rise in the volume of public family law cases, hence providing more opportunities to make a saving. The £6m saving in civil (non-family) cases only slightly exceeds the initial estimate of £5m per annum.

Reducing the fixed representation fees paid to solicitors in family cases covered by the Care Proceedings Graduated Fee Scheme - LAT

782. This change was introduced to reduce expenditure in an area of law (care proceedings) where the average duration of cases was getting shorter.
783. In terms of savings, because of the increase in public family volumes and the increase in average fees, the fee reduction has saved more than was anticipated in the original IA. By modelling the effect of the 10% fee reduction on the 2017-18 closed case fees paid to public family law solicitors it is estimated to have saved £30m per annum, compared to the estimated £20m per annum in the IA.
784. The impact of this change is difficult to show, because of the other changes to the way payments were processed by the LAA, but since this is a fixed fee-based scheme it can be assumed that the average fees paid have reduced in line with the reduction made to the fees set.
785. The average duration for care proceedings has dropped, from 55.1 weeks in 2011 to 28.2 weeks in 2017.²²⁹ This highlights that the fee reduction was justified, if case duration is the main proxy for determining work done.
786. Harmonisation of civil (non-family) barrister fees so that all advocates are paid the same in jurisdictions up to and including the High Court - LAT
787. In terms of savings for the legal aid fund, the harmonisation of civil barrister fees has saved an estimated £3m per annum – the same figure that was estimated in the original IA.
788. The impact can be seen in Figures 8 and 9. In normal cases the average fee for civil barristers has fallen (by 22%) following the harmonisation. In high cost cases there has been ongoing fluctuation, as this trend can often be skewed by some extremely expensive cases. As such, the overall change in average civil barrister representation fees has been an 18% decrease.

²²⁹ Source: Family Court Statistics Quarterly, January to March 2018 – see: <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-january-to-march-2018>

Figure 8 – average barrister fees for civil certificated work (normal cases), by application date

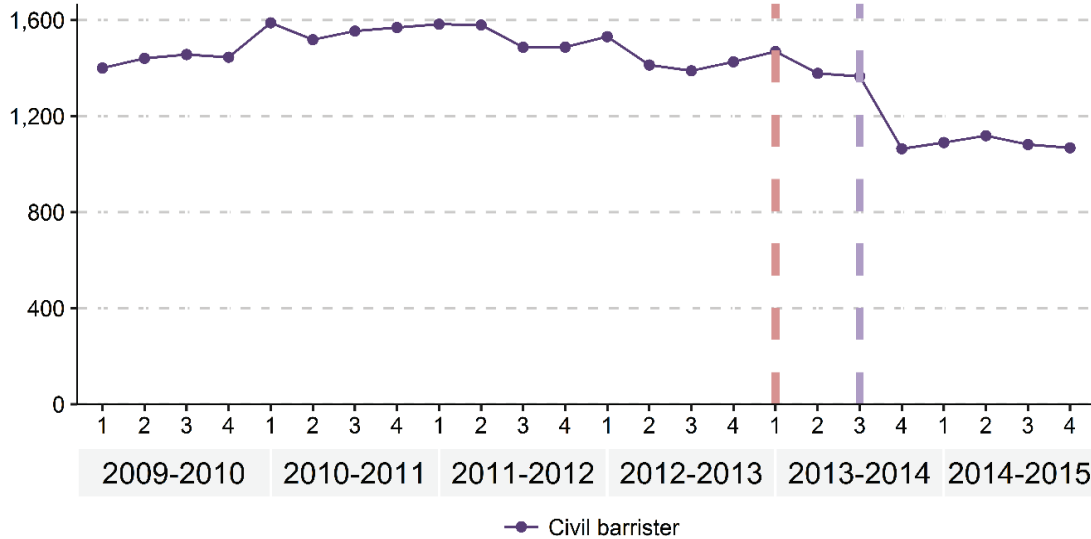


Figure 9 – average barrister fees for civil certificated work (high cost cases), by application date



Overall savings

789. The civil and family fee changes have saved a combined estimated £110m in 2017-18 – showing that the fee changes as a whole have met this objective. A summary can be found in Figure 10.

Figure 10 – overall savings from both LAR and LAT fee changes

Area	Legal help saving		Civil Representation saving		Total saving		
	LAR	LAT	LAR	LAT	LAR	LAT	Total
Family	£1m	£0m	£60m	£30m	£60m	£30m	£90m
Non-Family	£7m	£0.5m	£6m	£3m	£15m	£3m	£15m
Total	£8m	£0.5m	£60m	£40m	£70m	£40m	£110m

Discouraging unnecessary and adversarial litigation at public expense

790. The relevant changes made by LASPO to civil and family fees have been relatively successful at discouraging unnecessary and adversarial litigation at public expense. Whilst it is not possible to fully quantify the extent of their impact (due to a number of other factors at play), the removal of the fee uplift in immigration appeals and limiting remuneration for pre-permission work can be shown to have contributed to achieving this objective.

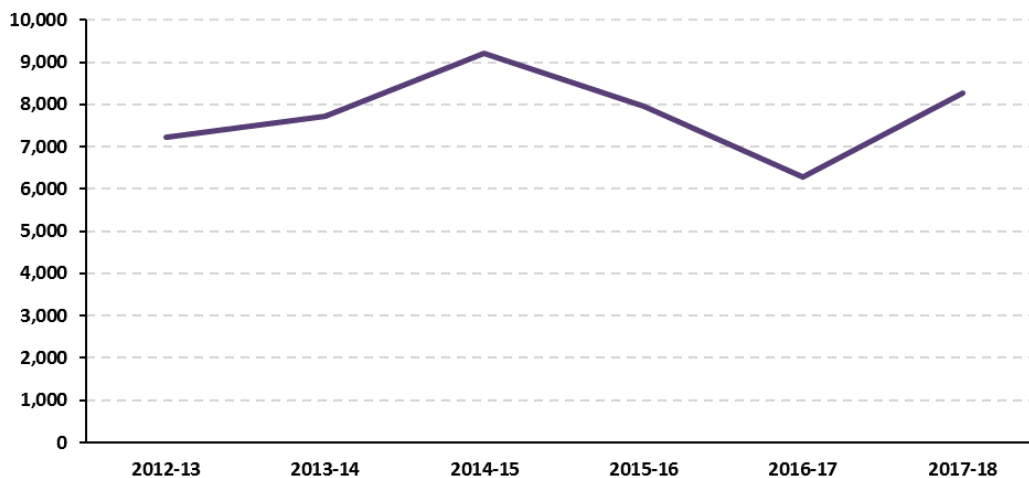
Removing the 35% fee uplift in immigration and asylum Upper Tribunal appeals - LAT

791. The change to remove the 35% uplift was aimed at discouraging unmeritorious appeals in the immigration and asylum Upper Tribunal. Whilst the volumes are relatively small in comparison to the scope changes discussed in chapter 1, this objective has been somewhat achieved, as volumes declined significantly between 2014-15 and 2016-17. However, the policy change alone is not the only factor as other changes have also contributed.

792. The extent to which this reform has achieved the objective of discouraging unnecessary litigation relies on the volumes of immigration and asylum cases that are now being heard at the upper tier tribunal. Figure 11 shows that volumes (of all cases, not just those involving legal aid) initially increased, then declined since a peak in 2014-15, but have again increased in 2017-18.²³⁰ This suggests that the removal of the uplift may have delivered its desired impact, but also highlights the impact of other factors at play.

²³⁰ For the tribunal statistics used in this section see: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognitions-certificates-statistics-quarterly-january-to-march-2018>

Figure 11 – volume of upper tribunal immigration and asylum chamber receipts



793. In addition to the LASPO reforms, there have been a number of changes to immigration policy and appeals operations which are also likely to have contributed to changes in volume and processing of cases in the immigration appeals system. This makes it difficult to assess the extent to which this change directly has achieved this objective, because it has not operated in a vacuum. In 2012 the Coalition Government implemented changes to the Immigration Rules for family migration whereby those claiming the right to enter or remain in the UK on the basis of ECHR Article 8 would be subject to scrutiny based on ‘the public interest to safeguard the economic well-being of the UK by controlling immigration and to protect the public from foreign criminals’. Moreover, the Immigration Act 2014 has removed the right of appeal from certain cases to the First-Tier Tribunal, which may have had an effect on onward appeals. Finally, the Immigration and Asylum Chamber has been subject to changes in resources in recent years, which have had an impact on many areas including judicial sitting days.

Limiting remuneration for pre-permission work on judicial reviews to cases where permission is granted – judicial review fee change

794. The change to limit remuneration for pre-permission work on judicial reviews to cases where permission is granted was aimed at discouraging unmeritorious appeals. This policy change has largely met the objective of discouraging unnecessary and adversarial litigation at public expense, although there are once again other factors at play in this area.

795. The Coalition Government considered it was appropriate for all the financial risk of the permission application to rest with the provider, as the provider is in the best position to know the strength of their client’s case and the likelihood of it being granted permission. The proposal was deemed an appropriate way in which to ensure that legal aid is not used to fund a significant number of weak cases and is focussed on cases that really require it.

796. The volume of judicial reviews funded by legal aid has declined by 20% since the fee change was introduced, but the volume of certificates which are granted

permission has risen by 16%²³¹. This suggests the policy has achieved its intention of discouraging unmeritorious judicial reviews at the public expense, although it is difficult to solely attribute that to the fee change, as several other policy changes and wider factors are in place.

Targeting legal aid at those who need it most

797. When compared with the scope and eligibility changes, the civil and family fee changes were less focused on targeting legal aid at those who need it most, and more focused on discouraging unnecessary and adversarial litigation (discussed above).

Delivering better overall value for money for the taxpayer

798. In total, the LAR and LAT civil and family fee changes were expected to save £24m and £50m respectively. Estimates show that these reforms saved £40m and £70m. Therefore, these policies delivered on economy i.e. they have provided significant, tangible savings to the cost of the legal aid scheme.

799. The changes have also been effective in that the fee changes have operated as intended and fees are now paid at lower and harmonised rates to providers.

800. In terms of efficiency, it has been argued that if the changes have caused long-term sustainability issues for the legal aid market, the civil and family fee changes may not have delivered greater overall value for money for the taxpayer. LAA data suggests that current provision is sufficient. However, ensuring that there is a strong and sustainable legal aid workforce is crucial to the provision of legal aid. The LAA monitors the availability of legal aid provision on an ongoing basis. Where issues are identified action is taken to ensure there is ongoing availability of legal advice for the public.

801. The following section is more detailed analysis regarding the civil and family legal aid market, focusing on key themes and assertions that were raised during the evidence gathering phase.

802. On balance, available evidence indicates that these policies represent greater overall value for money.

²³¹ As calculated from the endpoint codes reported by providers.

Sustainability of the market

803. Interested parties submitted evidence, based on their experience, regarding the ageing workforce that undertakes legally aided work, and well as difficulties regarding recruitment and retention in the professions. We are conscious of the need to ensure sufficient provision in the long-term, in so far as this is a matter for Government, and will continue to work with the relevant parties moving forward. More research is required to consider the long-term sustainability of the profession, although data suggests that the coverage and supply of civil legal aid provision is largely currently sufficient.
804. A key concern was that due to remuneration being reduced, the profession is no longer attracting the next generation of legal aid lawyers. Young Legal Aid Lawyers reported that low remuneration, combined with high levels of tuition fee debt, was a barrier to entry into the profession.²³²
805. The information collected on the demographic background of providers is limited to periodical surveys of the managerial level of solicitors' offices with legal aid contracts. Prior to LASPO, a survey was carried out by the Legal Services Research Centre in 2011²³³, and subsequently a survey was carried out by the LAA in 2015²³⁴. As participation in these surveys was not mandatory and response rates were relatively low, results should be treated as indicative only. They show that at managerial level the proportion of office managers or owners, with civil contracts, aged over 50 was reported as 48% in 2011 and 53% in the 2015 survey.²³⁵ However, the impacts of policy changes may take some time to filter through to managerial level.
806. Considering the other demographic characteristics of providers, the proportion of managers from an ethnic minority²³⁶ background was reported as 10% in 2011, and 14% in the 2015 survey²³⁷, which may indicate a slight rise. For gender the 2011 survey reported on the proportion of offices by majority control of gender – 61% had majority male, 20% had majority female and 19% had split managerial control. In the 2015 survey there had been a shift towards more female majority controlled offices, with 50% majority male, 28% majority female and 22% split managerial control reported²³⁸.
807. Coram Children's Legal Centre reported that "*legal aid rates of pay have made relatively small areas of law such as education law financially unviable unless*

²³² Young Legal Aid Lawyers (see reference 83)

²³³ Legal Services Research Centre, 2011. *Routine Diversity Monitoring of the Supplier Base*. To note: This surveyed 4525 providers (both civil and criminal offices), and got 1739 valid responses (a response rate of 38%).

²³⁴ Participation in the survey was not mandatory, out of 2,262 providers (both civil and criminal offices), 644 provided valid responses (a response rate of 28%).

²³⁵ These percentages exclude those whose age is not returned by the survey.

²³⁶ All backgrounds except white British

²³⁷ These percentages exclude those whose ethnicities is not returned by the survey.

²³⁸ In both the 2011 and 2015 surveys some offices are excluded where it cannot be determined which gender has majority managerial control

*legally-aided work is heavily supplemented by private practice or charitable funding.*²³⁹

808. The Civil Justice Council submitted the following: “*Demand for the advice and pro bono sectors has increased dramatically, but it has come at a time when funding for the advice sector is being squeezed from all directions – local authority grants as well as legal aid, leading to reductions in levels of services and also closures of law centres and advice agencies resulting in increasingly well documented advice deserts.*”²⁴⁰
809. The HLPAs also reported that because of the low fees and the subsequently difficult profit margins “*some firms are now cherry-picking cases which will bring in money and turn away clients with complicated financial circumstances or loss-making work such as legal help work*”²⁴¹
810. The total income on civil legal aid work has reduced by 25% since 2012-13, whilst the average income per civil legal aid provider has increased by 11%. This may be due to the change in case mix (as a result of scope changes and other factors), or because of the market restructuring itself.
811. The number of providers doing legally aided civil work has fallen by 32% overall, but this varies between the differing areas of civil law. Moreover, given the scope changes and the general reduction of work this was somewhat to be expected. The number of providers doing civil (non-family) work has fallen by 44%, compared to a 36% reduction in providers doing private family work and a 22% reduction in providers doing public family work. Figure 12 displays how the number of civil legal aid providers has changed between 2012-13 and 2017-18.

²³⁹ Coram Children’s Legal Centre (see reference 81) p4.

²⁴⁰ Civil Justice Council. 2018. *Evidence submission to this review*; p3. See: <https://www.judiciary.uk/wp-content/uploads/2018/12/laspo-part-1-outline-submission-20-Dec-2018.pdf>

²⁴¹ Housing Law Practitioners Association (see 102)

Figure 12 – number of providers completing civil work, by area of civil from 2012-13 to 2017-18²⁴²



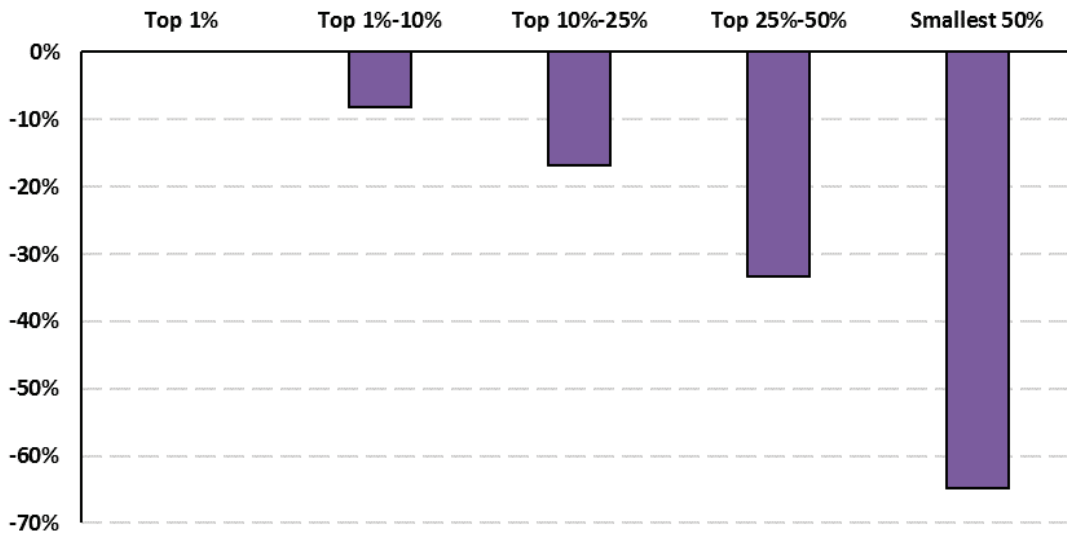
- 812. It is important to note that Figure 12 does not include the most recent contract tendering process, with the new contracts starting on 1 September 2018, because the data – as does all the graphs in this review – reflects the evidence up to the end of the last financial year (2017-18). In the most recent contract tendering process the number of offices increased to 3,568 and increased in all areas of law except clinical negligence.
- 813. Following the most recent tendering process we can also see the number of individual organisations with contracts, which currently sits at 1,578, having reduced slightly following the 2018 Civil Contracts. An organisation can contain multiple offices – the list of organisations can be found at the LAA published directory of providers.²⁴³
- 814. We can look at the impact of the reforms on providers according to the amount of legal aid work they do. To do so, providers have been grouped based on their legal aid income in 2012-13 and tracked to see how many were still completing legal aid work in 2017-18. There is a correlation between the size of the provider in 2012-13 (in terms of the amount of income from legal aid work, not their general size, as there is no data collection regarding their private work) and the likelihood of the provider still completing legal aid work in 2017-18. This means that providers that undertook a large amount of civil legal aid work prior to LASPO were more likely to still be completing legal aid work following LASPO, compared to providers that did smaller amounts of civil legal aid work. This is shown in Figure 13. However, this may not entirely be attributable to the reforms and could be due to other market forces, such as mergers of smaller firms to increase profitability. Note that providers

²⁴² Note that the total will not equal the sum of civil (non-family), private family and public family as a provider office may do more than one area of civil work.

²⁴³ See: <https://www.gov.uk/government/publications/directory-of-legal-aid-providers>

recorded within the 'smallest 50%' category may not be small, and will include large organisations which generate the majority of their income from other sources.

Figure 13 – percentage reduction in total providers doing civil legal aid work in 2017-18, grouped by their size in 2012-13



815. Although the volume of work has reduced and a number of providers have left the market, the distribution of work across different sized firms has remained fairly steady. Figure 14 shows that the work is still be undertaken in similar proportions, with a maximum of two percentage points change.

Figure 14 – civil legal aid market share

Size of provider	2012-13	2017-18
Top 1%	13%	13%
Top 1%-10%	37%	36%
Top 10%-25%	26%	27%
Top 25%-50%	17%	19%
Smallest 50%	7%	6%

816. Overall it is clear that the market has changed, but that is to be expected given the wide nature of the changes that LASPO introduced. The market is currently operating at sufficient levels to meet demand, but more research is required to determine the long-term sustainability of the profession.

Geographical coverage

817. Geographical coverage has also been considered in chapter 1, as the scope changes have also played a significant role in trends in this area.

818. The Law Society’s study on the provision of legal aid advice for housing states that “almost one third of legal aid areas have just one and – in some cases – zero law

*firms who provide housing advice which is available through legal aid.*²⁴⁴ These have been described as ‘advice deserts’.

819. Refugee Action suggest that since 2005, 56% of immigration and asylum providers have left the market, and as a consequence geographical gaps in provision have occurred. They assert that “*current legal aid provision is failing to keep pace with dispersal patterns, leaving gaps for those who find themselves in areas with fewer providers or less capacity.*”²⁴⁵ The LAA works with the Home Office to anticipate future dispersal patterns.
820. There is particular concern regarding access for those located in rural areas. During the roundtable engagement with Welsh organisations the issue of access was raised as a concern by a number of groups, such as Race Equality First and Citizens Advice Cymru, given the high proportion of rurality in Wales.
821. Some interested parties have reported that better technological provision of services may enable legal advice and support to reach individuals in more remote settings. For instance, the Legal Advice Centre (University House) are piloting a remote video advice service to people in Cornwall.
822. Geographical coverage of legal aid is regularly monitored by the LAA and steps are being taken to ensure that any potential gaps in provision are filled. Following the 2018 contracting round, there is effective coverage across England and Wales, with the exception of four housing and debt procurement areas and one immigration and asylum area. In these areas it has been historically difficult to find provision and this is not a product of LASPO.

Demand on the Not-for-Profit (NFP) sector

823. The advice and third sector have generally reported an increase in demand since LASPO. However, the HLPAs report suggests that these organisations are unable to ‘fill the gaps’ where legal practitioners are absent, because *a) the gaps are too large, b) they are also reliant on legal aid and face the same problems and c) other funding sources such as local authority funding are drying up as organisations face cuts and austerity measures.*²⁴⁶
824. Jo Wilding, an academic from the University of Brighton, suggested that the number of NFP organisations dropping out of the legal aid market was higher than the number of private firms. This is because NFP organisations do not have the ability to compensate for less profitable legal aid work with more lucrative legal practices. LAA data shows that in 2017-18, the total value of work (£s) for NFP providers was 50% less than in 2012-13, compared to a 20% reduction in the value of work for private providers.
825. In 2015, Law Centres Network reported that one in six of their members had closed. Citizens Advice described the loss of 350 specialist advisors, despite its varied funding streams making it less vulnerable to the loss of legal aid contracts than others. They reported this resulted in an 8% drop (approximately 85,500 people) in

²⁴⁴ See: <https://www.lawsociety.org.uk/Policy-campaigns/Campaigns/Access-to-justice/end-legal-aid-deserts/>

²⁴⁵ Refugee Action (see reference 78)

²⁴⁶ Housing Law Practitioners Association (see 102).

the number of clients receiving support with complex legal cases within the first three quarters of 2013-2014.²⁴⁷

826. NFP providers mostly work on social welfare and immigration law, which are areas that have been most impacted by LASPO scope changes. In total, the number of NFP providers doing work has fallen by 45%, a similar amount to the total value of work, which suggests the average income per provider has remained similar to pre-LASPO.

Quality of provision

827. There are also concerns about the impact the fee changes have had on the quality of civil and family legal aid work.
828. Jo Wilding has reported that in immigration cases the reduced fees has created a need for providers to undertake a larger volume of cases to meet the same level of income, and as such it has created a system that encourages poor-quality providers to supply low-level support to a high volume of cases, rather than spending the necessary time to help their client to the fullest.²⁴⁸
829. Shelter asserted in the consultative group meetings that *the reducing influence of legal aid as a funding source has had a detrimental impact on the quality and depth of advice*. It was asserted that *it requires the goodwill of the individual to go above and beyond to effectively provide high quality advice, against the obvious financial restraints*. Whilst some are still doing this, it was argued that the number is decreasing and cannot be relied on in the future.
830. The LAA peer review statistics suggests that the quality of provision has broadly remained the same. The peer review statistics display the distribution of providers across the five quality thresholders, with providers needing to score three or above to fulfil their contractual obligations. For family providers, the proportion of providers scoring below three has decreased from 7.46% in 2010-11 to 1.72% in 2017-18. For immigration and asylum, the number of providers scoring below three has increased from 6.67% in 2010-11 to 30.61% in 2017-18. For housing the proportion of providers scoring below three fell from 15.38% in 2010-11 to 12.5% in 2017-18. Lastly, for mental health the proportion of providers scoring below three fell from 21.21% in 2010-11 to 11.11% in 2017-18.

²⁴⁷ Citizens Advice Bureau. 2014. *Citizens Advice Submission to the Justice Select Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012*.

²⁴⁸ Jo Wilding. 2018. *Evidence submission for this review*.

Chapter 4 – Criminal legal aid reforms

4.1 Introduction

831. The reforms of the criminal legal aid system were largely introduced by the LAR and LAT packages of reforms, as discussed above. The reforms were principally focused on the remuneration of providers of legal aid.
832. The Coalition Government recognised the importance of legal representation in criminal cases, particularly those where the defendant could be subject to a prison sentence. There is a merits test in place (also known as the interests of justice test), however all Crown Court cases sent for trial are deemed to pass this test. Whilst applications for legal aid are granted almost universally in the Crown Court, there are more instances where it is unavailable in the magistrates' court. For instance, legal aid is seldom granted for driving offences in the magistrates' court (where there is no risk of imprisonment), although there are some exceptions.
833. However, there are also some scope and eligibility changes that were introduced by the LAR and LAT packages of reforms. With scope, there were changes to the availability of legal aid for prisoners. With eligibility, the method for recouping legal expenses for acquitted defendants has been reformed, and an upper financial threshold was added to the Crown Court means test. These changes will also be considered in this chapter.
834. This chapter will be structured as follows:
- i. 4.2 – Remuneration changes
 - ii. 4.3 – Scope changes – prison law
 - iii. 4.4 – Eligibility changes

4.2 Remuneration changes

Background and methodology

835. Criminal legal aid funds four main areas:

- i. **Pre-charge advice at the police station:** this consists of legal advice to suspects questioned in the police station, as well as individuals taking part in voluntary interviews. All suspects detained in the police station following an arrest are eligible to access a solicitor, either provided under the police station duty solicitor scheme or through instructing their own solicitor. Legal advice is also available in relation to non-imprisonable criminal offences, where the suspect will not be interviewed under the Police and Criminal Evidence Act 1984. This advice is available over the telephone, via the Crime Defence Direct (CDD) system. There is no means test for police station advice.
- ii. **Legal representation in the magistrates' court:**
 - a. This involves defending people prosecuted in the magistrates' court, either because the alleged offence is triable only in the magistrates' court (summary only offences, such as driving offences and common assault), or where the offence can be tried either in the magistrates' court or the Crown Court (such as burglary and theft). Legal aid in the magistrates' court is subject to a non-contributory means test and an interests of justice test.
 - b. This work is largely undertaken by solicitors. Generally, work done in the magistrates' court is remunerated using a mix of hourly rates and standard fees. The rates differ depending on the work being done.
- iii. **Litigation and advocacy services in the Crown Court and Higher Courts:**
 - a. This involves legal aid for proceedings in the Crown Court and above. This mainly includes advising and representing defendants prosecuted for either-way offences tried at the Crown Court or offences that are so serious that they be tried only in the Crown Court (indictable only offences), such as serious sexual offences, murder and manslaughter. There is a contributory means test for legal aid in the Crown Court.
 - b. Litigation work is undertaken by solicitors and advocacy work is undertaken by solicitor advocates and barristers. In the Crown Court, fee schemes are used to calculate a graduated fee for the case in question. For solicitors, the Litigators' Graduated Fee Scheme (LGFS) is used; for advocates, the Advocates' Graduated Fee Scheme (AGFS) is used. For cases that are expected to go to trial more than 60 days, the Very High Cost Case (VHCC) scheme is used.
 - c. Both graduated fee schemes have been subject to reforms since LAR and LAT. These reforms are discussed later in this chapter. Some of the reforms introduced by LAR have been amended by the recent AGFS changes. The Government believes that change was needed to better reward 'work done' and to reflect the reality of the modern criminal justice system.
 - d. Both schemes use a number of proxies to determine the fee, such as the type of case, the offence type, trial length and the number of pages of prosecution evidence (PPE). The proxies used and the weight placed on each of these proxies varies between the two schemes.
- iv. **Legal advice and advocacy assistance for prisoners:** this will be discussed in more detail in section 4.3.

Caveats to evidence

836. Both LAR and LAT IAs assumed constant volumes and case mix in their analysis, based on relevant data available at the time. To estimate the impact of the measures, we have similarly assumed 2017-18 bills represent constant volumes and case mix. For comparison, the reforms have then been reversed in relevant datasets, to provide an estimate of the additional expenditure in 2017-18 if these reforms had not occurred.
837. The analysis of overall trends is based on Ministry of Justice published statistics released in June 2018, which include VAT and disbursements, to be considered consistently with the IA.
838. Within these datasets, detailed breakdowns of criminal legal aid data are available as far back as 2010-11 (prior to the LAR reforms), but comparative AGFS data is only available from 2012-13, due to a change in ownership and subsequent changes to the system management of AGFS data around this time. For the purposes of looking at overall AGFS trends over time figures have only been included as far back as 2012-13. AGFS data from 2008-09 has been used for illustrative purposes; however, pre-2012-13 data can lack a sufficient level of detail to make reliable comparisons possible.

Key factors in criminal legal aid

839. Despite LASPO introducing significant fee changes, expenditure on criminal legal aid is driven by a multitude of factors, not just remuneration rates. Crucially two other factors are ongoing themes in this analysis: the falling volume of cases in the criminal justice system more widely, and the subsequent reforms to the LGFS and AGFS. Both factors have had a significant impact during the period in question and will be referred to regularly as part of this chapter.
840. The main driver behind the criminal legal aid remuneration changes introduced by LAR and LAT was an attempt to control spending on criminal legal aid following a period of sustained increase.²⁴⁹ The Carter Review, produced in 2006, laid the foundations for reform, including the introduction of graduated fees for solicitors in the Crown Court through the LGFS, and widespread reform of the AGFS.²⁵⁰
841. Each policy considered in this chapter has not been implemented in isolation and, as a result, it is difficult to evaluate the impact of each individual policy. The task of isolating the impact of the LAR and LAT fee changes is made slightly easier by the presence of only relatively small changes to the scope and the eligibility criteria of criminal legal aid. These changes will be considered later in this chapter.

The volume of cases in the criminal justice system

842. Since 2010-11 there has been a steep decrease in the volume of cases funded by legal aid in the magistrates' and Crown Court. Criminal legal aid is largely demand

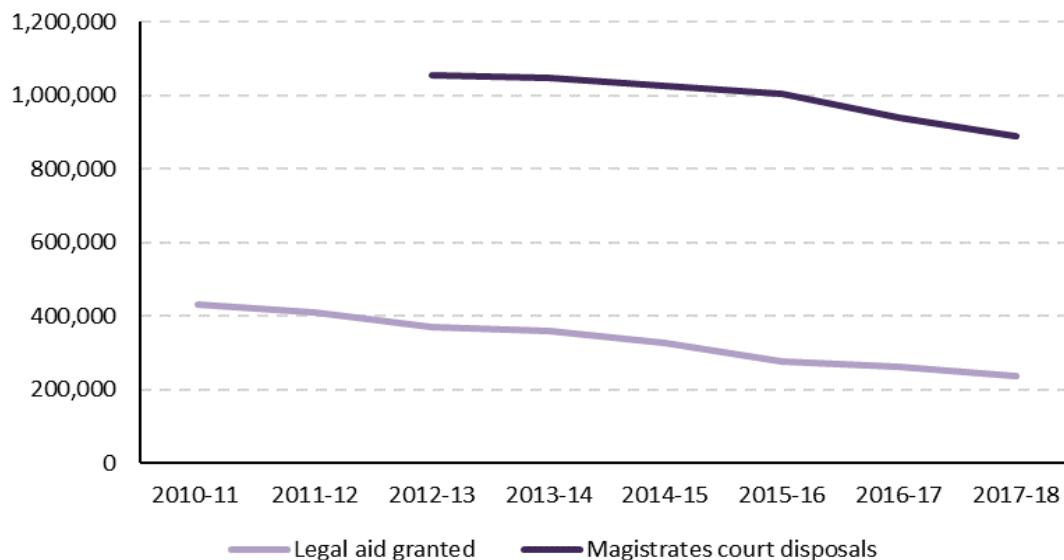
²⁴⁹ <http://webarchive.nationalarchives.gov.uk/20111013060755/http://www.justice.gov.uk/downloads/consultations/legal-aid-reform-consultation.pdf>. See: paragraph 2.3

²⁵⁰ Lord Carter's Review of Legal Aid Procurement. 2006. *Legal Aid – A market-based approach to reform*. <http://webarchive.nationalarchives.gov.uk/20081205143452/http://www.legalaidprocurementreview.gov.uk/docs/carter-review-p1.pdf>

led, and a range of factors affect court volumes including crime trends, police and CPS behaviour, and wider changes in the justice system (some of which have been discussed at paragraph 887).

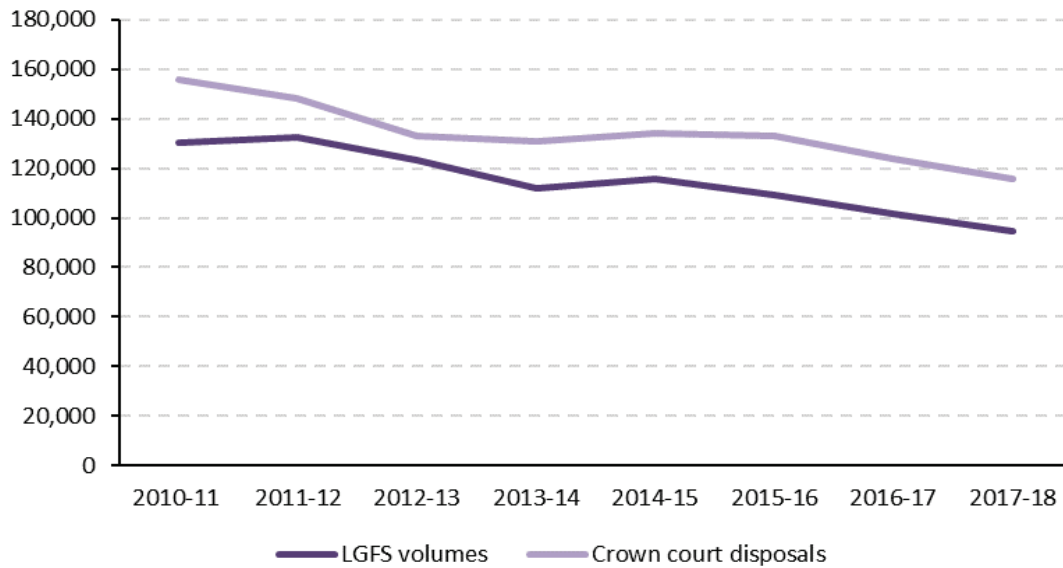
843. Figure 1 demonstrates that overall legal aid grants in the magistrates' court have decreased from 430,000 to 235,000 between 2010-11 and 2017-18 (45%), while Figure 2 shows LGFS volumes (a good proxy for the overall volume of Crown Court cases funded by legal aid) have fallen from 130,000 to 95,000 between 2010-11 and 2017-18; a fall of 27%. VHCC completed cases have not been included in these graphs but are discussed in greater detail below.
844. The fall in LGFS volumes is broadly consistent with the overall reduction in Crown Court disposals (i.e. court cases), which fell from 155,000 in 2010-11 to 115,000 in 2017-18 (25%). However, the fall in legal aid grants in the magistrates' court is greater than the reduction in magistrates' court disposals (for case types that typically attract legal aid²⁵¹). For magistrates' court disposals data, the first complete year of data available from 2012-13, which shows a 16% fall between 2012-13 and 2017-18, compared to a 36% fall in legal aid grants for cases in the magistrates' court over the same period.
845. Whilst the reduction in volumes described above would ordinarily lead to a similar reduction in spend, we have witnessed increased average case costs in both LGFS and AGFS since 2012 (the reasons for this are discussed at paragraph 847). The LAR and LAT criminal legal aid fee reforms described below result in reduced spend but it is difficult to determine the extent to which the reduction in volumes and the increased average case cost skew the data.

Figure 1 – Volume of disposals in the magistrates' courts (excluding summary motoring and indictable only offences) and legal aid granted for representation in the magistrates' courts



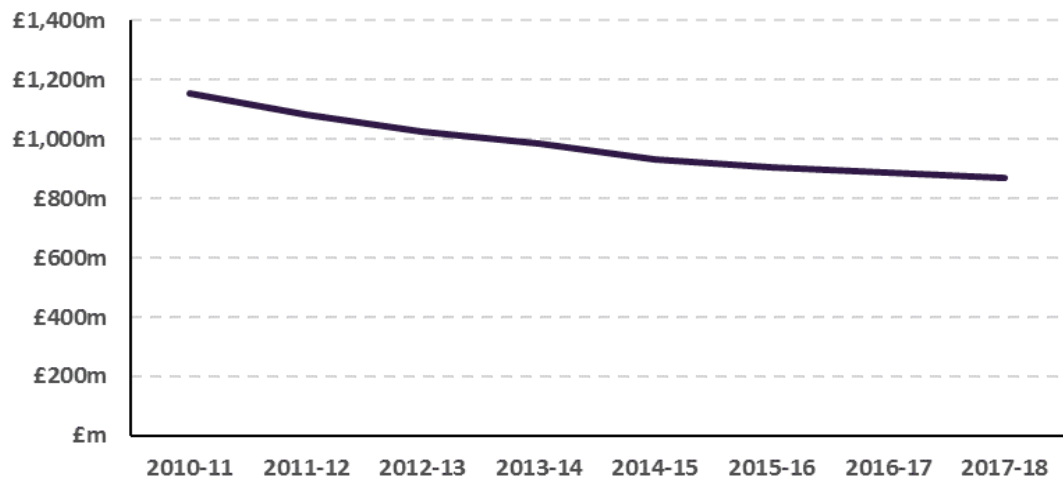
²⁵¹ This includes all magistrate's disposals except for indictable only and summary motoring offence disposals.

Figure 2 - LGFS closed case volumes and Crown Court disposals



846. Figure 3, below, shows that there has been a decline in criminal legal aid expenditure over time. This decline is linked to the overall reduction in legal aid volume over this period, as well as to some of the changes introduced by LASPO. This shows overall spend on criminal legal aid has fallen from around £1.18bn to £890m between 2010-11 and 2017-18 (24%).

Figure 3 – criminal legal aid expenditure (RDEL)²⁵² – 2010-11 to 2017-18

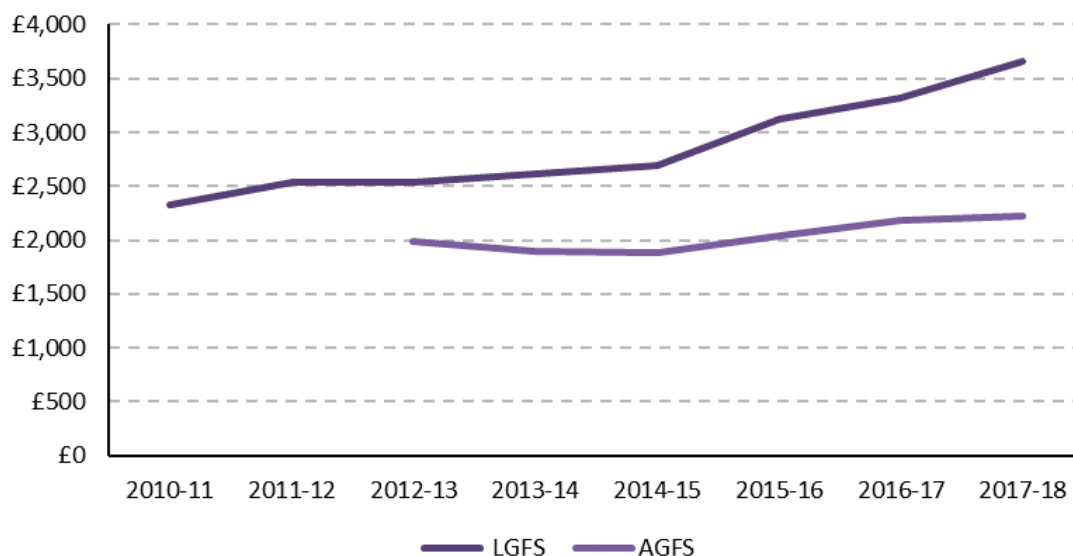


²⁵² Nominal terms

Reforming the LGFS and AGFS

847. The second important element driving criminal legal aid trends (beyond LASPO) is further reforms to the method by which the payment made to solicitors and advocates working in the Crown Court is calculated.
848. Both graduated fee schemes use a number of proxies to determine case complexity, including the offence type; the timing of any guilty plea entered; the length of the trial (if the case proceeds to trial); and the amount of PPE. The proxies are weighted differently for each graduated fee scheme based on where the majority of the work is undertaken. For example, solicitors are involved in more of the case/trial preparatory work with the client whereas the advocate undertakes more work delivering the defence at court. The average PPE in Crown Court cases has risen since 2012 due to a number of factors described in the relevant sections below.
849. As mentioned above, despite the overall falls in volume and expenditure there have been increased average case costs in the LGFS and AGFS. There are a number of factors that have contributed to this increase. For instance, the increased number of high volume PPE cases in recent years has played a part in driving up case costs. Historically, PPE is a proxy used for calculating fees through both the LGFS and AGFS, as an indicator for varying degrees of case complexity. Due to the differing nature of the roles, the proxy holds more weight in the LGFS, compared to the AGFS. Figure 4 highlights how the average case cost has changes in both fee schemes.

Figure 4 – LGFS and AGFS average case costs



850. In the LGFS, despite overall caseload falling from 130,000 to 95,000 between 2010-11 and 2017-18 (27%), the overall number of PPE has increased by around 60% over the same period. This has largely been seen as an overall increase in cases with high volumes of PPE, such as the number of cases with 10,000+ pages has increased by around eight times, from around 250 in 2010-11 to around 2,000 in 2017-18. Factors such as PPE show the difficulties in isolating the impact of LAR and LAT.

851. Although the schemes for litigators and advocates use similar proxies they are calibrated differently, to take account of the distinct roles of litigators and advocates. For example, a large proportion of the overall fee for litigators is driven by PPE, whereas the number of trial days is a bigger driver of the overall fee for advocates.
852. Since LASPO there have been attempts to reform both the LGFS and AGFS to reflect trends in the court system and the legal aid market.
853. An attempt was made to reform the LGFS due to developments with the PPE proxy. PPE takes into account the amount of evidence served on the defence. The original policy intent had been to ensure that evidence which would have previously been served in paper format, but was now served digitally for convenience would still be PPE. However, following a series of judgments, including *Napper*,²⁵³ the courts held that in fact the regulations provided that digital material was excluded unless taking into account the nature of the document and relevant circumstances the assessor considered it appropriate to include. In the Government's view, this resulted in a steep increase in cases with a high volume of PPE, particularly within the LGFS scheme. In response, the LGFS was reformed – reducing the limit for PPE from 10,000 pages to 6,000 per case (anything exceeding this limit was to be remunerated under 'special preparation'), in order to preserve the status quo. However, this reform was the subject of further litigation and ultimately, the statutory instrument introducing the reform was quashed.²⁵⁴
854. Reforms have also been made to the AGFS. On 1 April 2018, following a full public consultation, the Government implemented a reformed AGFS that sought to provide a fairer, simpler and more modern approach for remunerating defence advocates in the Crown Court through legal aid. The AGFS introduced in April was the tenth version of the AGFS since its inception, or Scheme 10, and it superseded Scheme 9. Following further consultation with the professions the Government launched another consultation on the AGFS in August 2018 and implemented Scheme 11 on 31 December 2018. The new scheme spends a further £8m on the scheme against the 'baseline' of 2016-17 data, focused on better remunerating the 'work done' by more junior advocates, bringing the estimated total additional spending on the scheme to around £23m more than actual spend on 2016-17 cases. It also brings forward the proposed 1% increase to all fees from April 2019 to the coming into force date of Scheme 11, meaning that advocates benefit from this change sooner than originally proposed.
855. The Government has commenced a broader review of criminal legal aid fee schemes. This is in response to outstanding concerns following the AGFS Scheme 11 consultation, the Justice Select Committee's recent reports on criminal legal aid and disclosure in criminal cases, the Attorney General's review of disclosure, and broader changes across the justice system including the modernisation work being undertaken by the Home Office, police, CPS and HMCTS. The Government believes the time is right for a more holistic review of criminal legal aid fee schemes.
856. In some areas, the changes introduced under Scheme 10 and 11 have a different approach to some of the policies introduced by LAR and LAT and consequently

²⁵³ *R v Napper* [2014] 5 Costs LR 947.

²⁵⁴ *The Law Society v Lord Chancellor* [2018] EWHC 2094 (Admin)

some of the policies reviewed in this chapter have now been changes. Wherever applicable this has been highlighted in this chapter.

Policy Summary

857. The following section outlines the changes to criminal legal aid remuneration made by LAR and LAT. Their impact will be considered later in the chapter.

LAR remuneration changes

Reform fee structure for indictable only cases and for either way cases found unsuitable for summary trial that result in a cracked trial

858. Indictable only offences may only be tried in the Crown Court. Either way offences may be tried either in the magistrates' court (summary trial) or in the Crown Court (trial on Indictment). In general terms, a cracked trial refers to a case which was due to proceed to trial but did not for whatever reason.²⁵⁵ Reasons necessitating a cracked trial often are late guilty pleas (i.e. the defendant initially pleading not guilty, then changing their plea later in the process), or the prosecution not proceeding with part, or all, of the charged offences.
859. Prior to LAR, a higher fee was paid for a guilty plea accepted later in proceedings than a fee for a guilty plea accepted before or at the Plea and Trial Preparation Hearing (PTPH). It was treated as a cracked trial if the plea was accepted later, generally after the PTPH, but before the start of the trial. In many cases, the cracked trial fee was more than twice the fee paid for a guilty plea entered before the case was listed for trial, whether or not any additional work had been undertaken, because of additional evidence being served between the PTPH and the cracking of the trial.²⁵⁶ Payments for cracked trials and guilty pleas had risen considerably since 2007.
860. The period between the date of the PTPH and the opening day of the trial is divided into 'thirds' and the distinction between the thirds are used to determine whether a guilty plea fee or cracked trial fee is paid. Previously, cases where the plea is entered in the first third of this period received a guilty plea fee; cases where the plea is entered in the second two thirds of this period received a cracked trial fee.
861. The Coalition Government saw no reason why it should necessarily pay significantly more for a guilty plea offered later in proceedings, than one offered earlier. It was concluded (and introduced as part of LAR) that the best way to achieve this, taking into account the responses to consultation, was to leave fees for guilty pleas at the existing levels while reducing the fees for cracked trials by 25% overall.²⁵⁷ This would reduce the significant differential in fees between guilty pleas and cracked trials, but also addressed the key concern expressed in consultation, namely the

²⁵⁵ Cracked trials are defined at Paragraph 1 of both Schedules 1 and 2 of the Remuneration Regulations - <http://www.legislation.gov.uk/ukxi/2013/435/schedule/1/part/1/made>

²⁵⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf - paragraph 6.24

²⁵⁷ In light of this, the Coalition Government reduced payments for cracked trials under the LGFS by 25%. However, a simple reduction would not work for the AGFS as some cracked trial fees would then pay less than the fees for an early guilty plea, because AGFS payments are less dependent on PPE. Therefore, the value of PPE under the AGFS was reduced for trials that crack in the final 'third' to the same level as trials that crack in the second third and then reduced all cracked trial base fees by 11%. This was estimated to achieve an overall reduction of 25% in AGFS payments for cracked trials.

impact on the more complex cases. For the more complex cases, a flat rate could mean significant amounts of additional, necessary, work may go unremunerated.

Reforming the fee structure for electable, either way cases heard in the Crown Court

862. Prior to the LAR reforms, either way cases committed for trial at the Crown Court attracted fees under the LGFS and the AGFS whereas those handled in the magistrates' courts attracted a fixed fee under the magistrates' courts Standard Fee Scheme.
863. Before LAR, the litigator in a case where the defendant pleaded guilty before the magistrates' court was paid a lower or higher standard fee for the whole case. If the same case went to the Crown Court and the defendant at that stage entered a guilty plea, the litigator (solicitor) would have been paid a graduated fee, plus a fixed fee for the committal. The advocate would have also been paid their own separate graduated fee. The Coalition Government reformed the fee structure so that it did not inadvertently encourage delay (particularly when the defendant has elected for the Crown Court and later pleaded guilty) or potentially discourage the defence team from giving consideration to plea with the defendant early in proceedings and before questions of venue have been determined.²⁵⁸
864. The Coalition Government introduced a system, which would:
- i. pay a single fixed fee of £565 for a guilty plea in an either way case tried in the Crown Court which the magistrates' court has determined is suitable for summary trial;²⁵⁹
 - ii. enhance the lower standard fee paid for cracked trials and guilty pleas under the magistrates' courts scheme by 25% for either way cases;²⁶⁰ and
 - iii. remove the separate fee for a committal hearing under the LGFS for all cases committed to the Crown Court for trial. This saving would be used to fund the enhanced lower standard fee.

Aligning fees paid for 'Murder and Manslaughter' in the LGFS and AGFS to those of 'Serious Sexual Offences'

865. Prior to LAR, fees paid in cases of murder and manslaughter (class A cases under the LGFS and AGFS) attracted significantly higher fees than those offered for other

²⁵⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf – see para 6.16.

²⁵⁹ In 2009/10, 64% of the relevant expenditure in these cases (payments under the two Crown Court graduated fees schemes, and payments for committal hearings in the magistrates' courts), was paid to litigators and 36% to advocates. The Coalition Government believed that this was a fair basis for apportioning the fee of £565 (excluding VAT) between litigation and advocacy. The fee for litigation is therefore £362 (excluding VAT) and the advocacy fee is £203 (excluding VAT).

²⁶⁰ Having considered the consultation responses, the Coalition Government decided to modify the original proposal so that both the lower standard fee and the higher standard fee were enhanced (by 23% and 8% respectively) within the same overall funding envelope.

very serious cases (such as serious sexual offences), under both the LGFS and the AGFS.²⁶¹

866. Although cases of murder and manslaughter have a much higher public profile, the Coalition Government believed that they do not necessarily raise more complex matters of law or fact than other very serious offences, such as rape and other serious sexual offences. Although murder carries a mandatory life sentence, many other serious offences also carry a maximum sentence of life imprisonment, including rape and some other serious sexual offences. While cases of murder and manslaughter often involve high volumes of prosecution evidence, this was separately recognised through the enhancements available for PPE.
867. The Coalition Government therefore changed the fees paid under the LGFS and AGFS for all class A cases (including trials) to those paid for class J cases (rape cases and other serious sexual offences).

Combining fees for dishonesty offences to a single group paid at a lower rate

868. The pre-LAR AGFS and LGFS paid three different sets of fees for offences of dishonesty, depending upon the value of the offences concerned.
- i. Offences concerning amounts less than £30,000 were remunerated in class F;
 - ii. those over £30,000 but under £100,000 in class G; and,
 - iii. those over £100,000 in class K.
869. The Coalition Government considered the case for removing all the distinctions between cases of dishonesty based on value. However, on balance it was thought the preferable option was to:
- i. amalgamate classes F and G, remunerating most cases of dishonesty (including trials) at the class F level, with fee enhancements available as at present based on PPE; and
 - ii. retain class K for the most serious offences of dishonesty, with values over £100,000.

Aligning magistrates' court fees in London with other major urban areas

870. Prior to LAR there were three different sets of fees payable for magistrates' court work depending on the location (i.e. Rural Areas, Urban Areas and London). The fees in London were the highest of the three sets of fees. The Coalition Government accepted that operating costs could be higher in London, but did not believe that such a differential in fees could be justified, particularly as there was a more than adequate supply of solicitors willing to undertake criminal work in London.
871. Fees for Crown Court work provided no additional allowance for work carried out in London. The Coalition Government proposed, therefore, to remove the distinction in magistrates' courts fees payable in London, bringing them into line with the fees paid in other major urban areas.

²⁶¹ Except for guilty pleas or cracked trials in the AGFS. For cases with more than 500 PPE, advocates get more post-alignment than pre-alignment.

Reducing ancillary payments to advocates ('bolt on' payments)

872. The AGFS previously included a number of ancillary payments, or 'bolt-ons', for specific tasks. The number of such 'bolt-ons' was reduced following the Carter Review, although with a number of them being incorporated within the basic fees payable to advocates.²⁶² The first five standard appearances and the first three conferences, for example, were now included in the basic fee. Prior to LAR, many of the remaining 'bolt-ons' were increasing in cost and the Coalition Government sought to reduce expenditure to align with Lord Carter's recommendations.
873. Following consultation, the Coalition Government believed the most effective method was to retain 'bolt-on' fees for those cases which normally raised genuinely complex or lengthy legal arguments, but to remove them for those which did not. As such, 'bolt-ons' were retained at current levels for all hearings other than sentencing hearings.²⁶³

²⁶² The Carter Review (see reference 250)

²⁶³ Sentencing hearings were treated as one of the five appearances covered within the standard graduated fee. These hearings take place in around 85% of Crown Court cases, and do not routinely raise novel, complex or lengthy arguments. This is analogous to the position with the PTPH, which take place in almost every case, and are included as one of the standard appearances within the base fee.

LAT remuneration changes

8.75% reduction to solicitor fees

874. The Coalition Government proposed a 17.5% reduction in legal aid rates paid to solicitors for all criminal legal aid work, with the exception of VHCCs, based on the rates paid in 2012-13. The rationale behind this was to reduce criminal legal aid spend, through a combination of straightforward rate reductions but also steps to simplify the existing remuneration process, which was described as unnecessarily complex.
875. Following analysis from PA Consulting²⁶⁴, it was clear that the market could not sustain a full 17.5% fee reduction in one step. However, the analysis showed that the existing criminal legal aid market could sustain half of the fee reduction (8.75%), but the second half of the fee would require significant market restructure. Therefore, the fee reduction was introduced incrementally, to strike the appropriate balance of delivering initial savings and mitigating the risk of a single, substantial drop in prices while incentivising change.
876. The savings accompanied the plans to introduce price competitive tendering for criminal legal aid contracts, designed to incentivise organisations to work with others to deliver legal aid services under, in most instances, a larger contract size. By doing this it was hoped that firms would benefit from increased economies of scale and greater efficiencies and consequently the Coalition Government believed a second 8.75% reduction in solicitors' fees was feasible.
877. The first 8.75% fee reduction was introduced in April 2014 and the second was implemented in July 2015. However, the July 2015 reduction was reversed in January 2016. In a written ministerial statement, the then Lord Chancellor stated that since July 2015 two reasons had caused him to reverse the second fee reduction. Firstly, thanks to economies made elsewhere in the Ministry of Justice, the Treasury allowed for greater flexibility in the allocation of funds for legal aid. Secondly, following legal challenges mounted against the procurement process, there were problems in pressing ahead as initially proposed. Although the second and final 8.75% fee reduction was reversed, the original 8.75% fee reduction remained in place.

Reducing the use of multiple advocates in criminal cases

878. The Coalition Government were concerned that in some Crown Court cases multiple advocates were being appointed unnecessarily, particularly in cases with multiple defendants.
879. The policy had two main impacts:
- i. Tightened the criteria which inform the decision made by judges to authorise representation by two or more counsel; and,
 - ii. Took steps to ensure that they are applied more consistently and robustly in all cases.

²⁶⁴ See: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/supporting_documents/paconsultingreport.pdf

880. The policy also amended the 'prosecution condition' criterion for the appointment of multiple advocates to make clear that it is not sufficient just to demonstrate that the prosecution has multiple advocates.
881. Approval of decisions to authorise the use of QC or multiple counsel now rest with Presiding Judges who are in a position to provide oversight on a circuit-wide basis to ensure consistency of approach between court centres, where differing practices may have evolved over time. Presiding Judges have the power to delegate their function (e.g. to a Resident Judge) where they consider it appropriate. This was aimed to provide the flexibility to ensure that bureaucracy and delay was minimised.

Very High Cost Cases (VHCC) fee changes

882. The VHCC scheme has been in operation since 2000, to remunerate the most complex and expensive criminal cases. All other Crown Court cases are remunerated under the applicable Graduated Fee Scheme for either Litigators or Advocates. The changes to the VHCC scheme were introduced by the LAT package of reforms, but given the different nature of the scheme they have been considered separately here.

Harmonise payments in VHCC for cases expected to take up to 60 days at trial

883. Prior to LAT, there was a discrepancy where cases due to last over 40 days were remunerated by the VHCC scheme for litigators, whilst only cases due to last over 60 days were remunerated by the VHCC scheme for advocates. The Coalition Government took the view that, consistent with the approach in place for advocates, only cases due to last above 60 days at trial should continue to be paid at VHCC rates and that payment for all work on cases due to last under 60 days should therefore be at levels set out in the Litigators' Graduated Fee Scheme. The Coalition Government decided to achieve this by continuing to provide for individual case contracts for cases due to last 41 to 60 days, but to be paid at the rates set out in the LGFS, rather than VHCC rates. The change was introduced for cases with a Representation Order on or after 3 October 2011.

30% reduction in VHCC fees

884. On 2 December 2013, the former Lord Chancellor introduced a 30% fee reduction for all VHCCs still funded through negotiation with a Case Manager.²⁶⁵

885. Although litigators continued to work, advocates on some existing cases returned their briefs and it proved impossible for litigators to instruct counsel at the independent Bar for new cases. *R v C* and others (also known as Operation Cotton) was a high profile multi-handed fraud trial which was dismissed at the Crown Court because it was adjudged that a fair trial could not take place without adequate representation. The decision to dismiss was overturned by the Court of Appeal, but prompted closer negotiation with the Bar for payment on existing VHCCs and the introduction of Interim Fixed Fee Offers (IFFOs).

886. For those cases subject to the rate reduction of December 2013, and for all cases subsequently classified as VHCCs, whilst litigators have been funded under the 'conventional' VHCC scheme, negotiating work in conjunction with their VHCC case manager, counsel have been funded through IFFOs.²⁶⁶ The IFFO model was recently published by the LAA.²⁶⁷

²⁶⁵ This included a rate cut for work on some cases classified prior to December 2013 and already in train.

²⁶⁶ IFFOs are fixed fees, paid in three instalments according to an IFFO contract, and calculated and agreed as early as possible in the proceedings. Calculations are made taking into account certain factors about the case – the case's complexity, estimated trial length, and the volume of material, but may be negotiated between the parties taking into account other information provided by Counsel. At present, IFFOs are only available to members of the independent bar and not solicitor advocates, who continue to operate under the solicitor's VHCC Contract.

²⁶⁷ See: <https://www.gov.uk/guidance/high-cost-cases-crime#individual-criminal-case-contract-icc>

Changes since LASPO

Better Case Management

887. Better Case Management (BCM) links certain key complementary initiatives, which together aim to improve the way cases are processed through the system, for the benefit of all concerned within the criminal justice system (CJS). BCM is a joint initiative, led by the judiciary.²⁶⁸
888. BCM forms part of the implementation of Sir Brian Leveson’s Review of Efficiency in Criminal Proceedings, published in January 2015.²⁶⁹ Some of the initiatives introduced by BCM include a uniform national Early Guilty Plea scheme and Crown Court disclosure in paper-heavy cases. Consequently, greater efficiencies in the legal system could drive saving in legal aid spend, for instance by not paying for unnecessary hearings.

Transforming Summary Justice

889. Transforming Summary Justice (TSJ) is an initiative introduced across the Criminal Justice System to improve how cases are dealt with in the magistrates’ court. The TSJ programme was introduced to ensure that all parties play their part in improving efficiency and effectiveness, based on ten characteristics, such as streamlined disclosure and quality assured police files.²⁷⁰ In a similar way to BCM in the Crown Court, TSJ could have triggered similar changes in behaviour in the magistrates’ court and consequently impact on legal aid expenditure.

²⁶⁸ See: <https://www.judiciary.uk/wp-content/uploads/2018/02/bcm-guide-for-practitioners-20180207.pdf>

²⁶⁹ See: <https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf>

²⁷⁰ See: <https://www.cps.gov.uk/publication/transforming-summary-justice-criminal-justice-system-wide-initiative-improve-how-cases>

To what extent did the LASPO criminal legal aid fee changes achieve their original objectives?

Making significant savings to the cost of the scheme

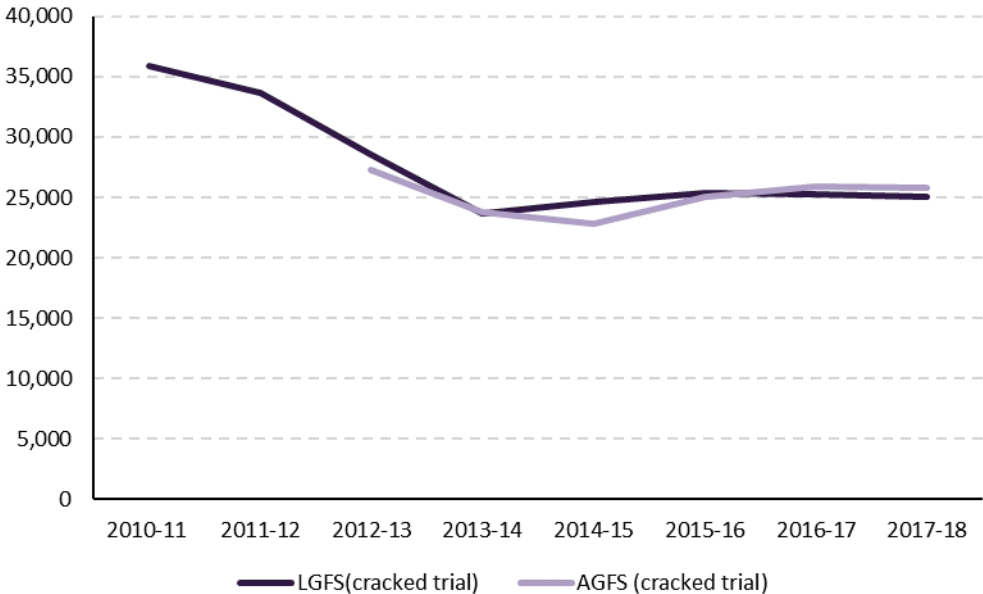
890. The criminal legal aid fee changes have successfully made significant savings to the cost of the scheme, with some variability between the policies in terms of the magnitude of the savings. Although many of the policies saved less than the estimate in the IA, this is largely due to the falling volumes of cases in the criminal justice system, and as such criminal legal aid expenditure as a whole has declined. In total, based on 2017-18 data we estimate that the fee changes have saved £140m per annum, although many of the individual policy changes can only be roughly estimated, due to the presence of other drivers.

Reform fee structure for indictable only cases and for either-way cases found unsuitable for summary trial - LAR

891. This policy was designed to make savings and remove any disincentive for guilty pleas later in the case. The original IA estimated that this change would save £40m per annum to the criminal legal aid fund. Based on 2017-18 data, it is estimated to have saved around £30m per annum (rounded to the nearest £5m), with around £20m of this estimated reduction coming from reduced LGFS expenditure and £14m from the AGFS.

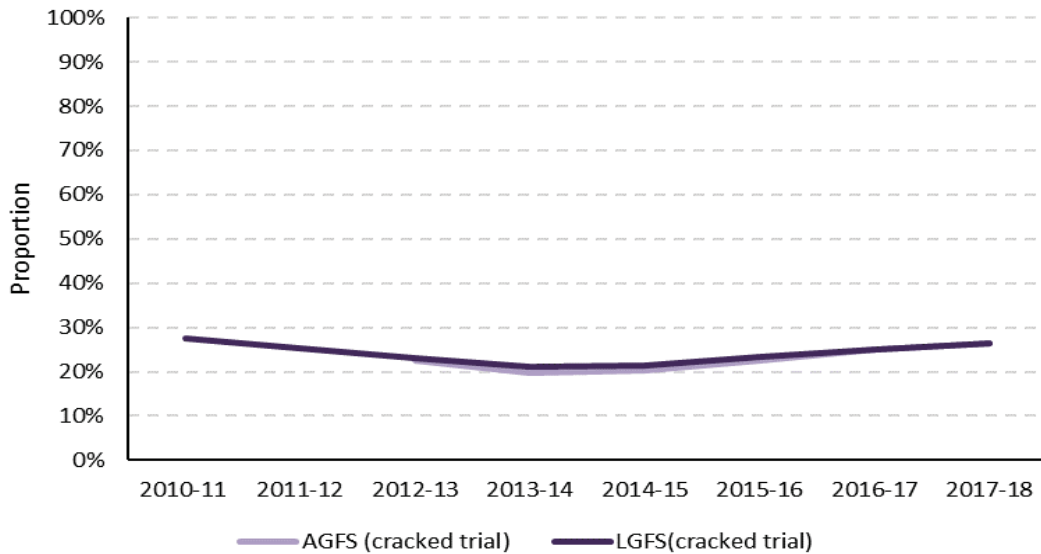
892. Figure 5 shows that the volume of cracked trials in the LGFS has reduced substantially (around 30%) between 2010-11 and 2013-14.

Figure 5 – volume of cracked trials in both the LGFS and AGFS



893. The volume of cracked trials as a proportion of all cases has remained broadly stable, dropping from 25% in 2010-11 to around 20% in 2017-18, as can be seen in Figure 6. This could be due to the policy to disincentivise late guilty pleas, but the reduction in cracked trials is consistent with the falling volume of Crown Court cases in general, so it is difficult to provide a firm conclusion.

Figure 6 – proportion of LGFS and AGFS cases which crack



894. The average cost of cracked trials for both the LGFS and the AGFS has declined over time, but neither fee scheme has reached the 25% reduction envisaged as a result of this policy change. As Figures 7 and 8 highlight the average cost for cracked trials under the LGFS has decreased by 10% since 2010-11 and the average cost for cracked trials under the AGFS has decreased by 18% since 2012-13. AGFS figures from 2008-09 suggest average cracked trial costs have reduced by around 15%.

895. The fee reductions have likely been partially offset by the rising volumes of PPE payments, which has more of an influence in the LGFS than it does in the AGFS. The increase will also have been affected by changes in case mix such as increases in murder and manslaughter and serious sexual offences cases in recent years, which have high legal aid unit costs.

Figure 7 – LGFS average costs for cracked trials and other cases excluding cracked trials

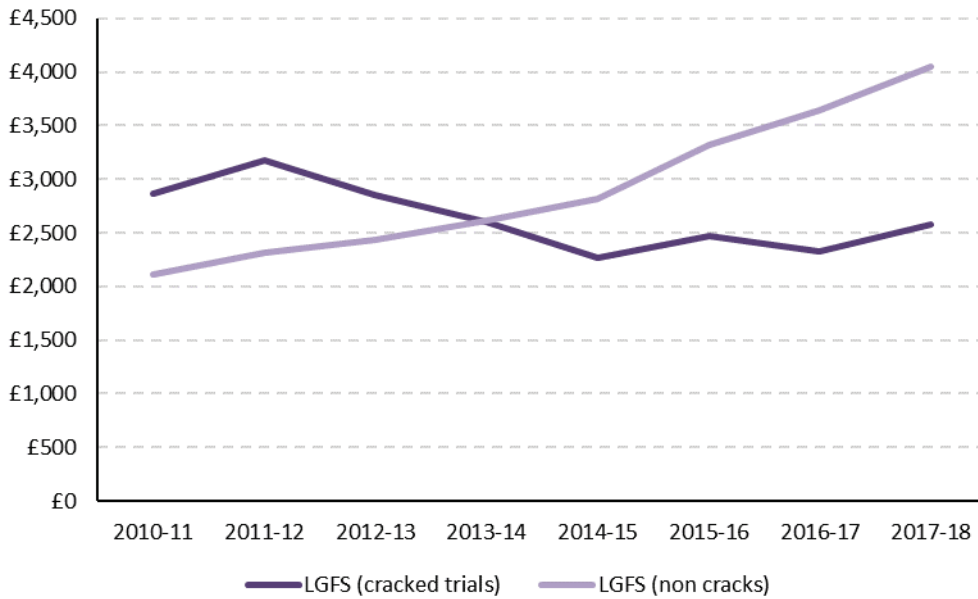
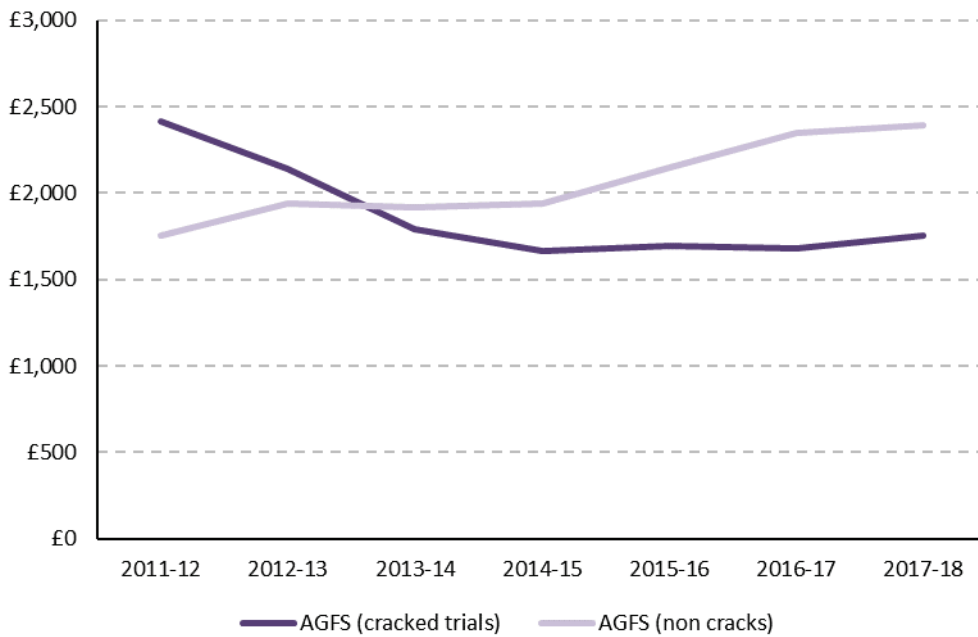


Figure 8 – AGFS average costs for cracked trials and other cases excluding cracked trials



896. Therefore, this policy has delivered savings and achieved the aim of more closely aligning the fees for guilty pleas and cracked trials. However, as the proportion of cases that crack has remained fairly stable, it doesn't appear to have an impact on the timeliness of when the plea is entered.

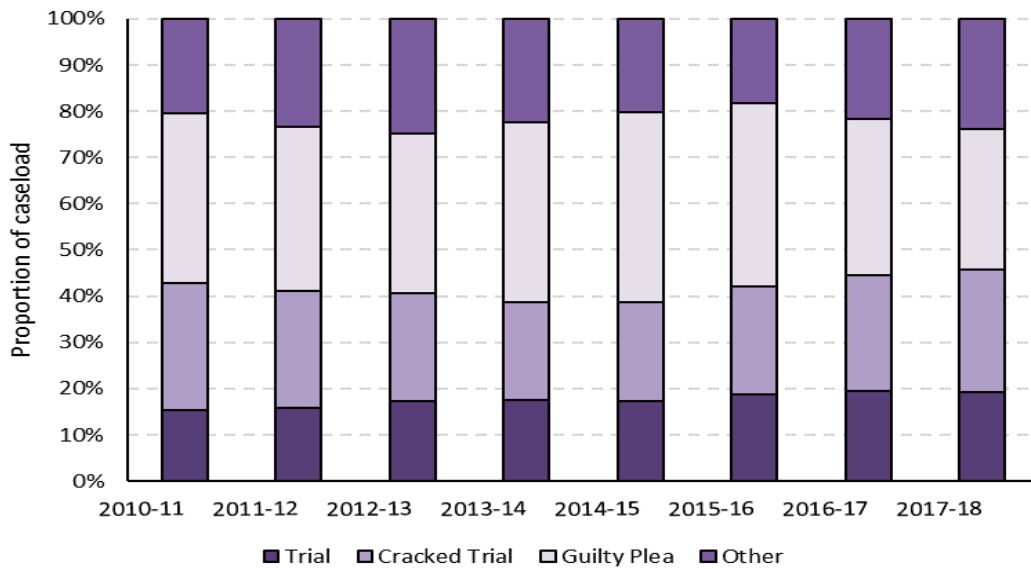
897. Recent AGFS changes have further reformed this area of the fee scheme.²⁷¹ Specifically, a guilty plea fee is now payable in cases where there is a plea in the first two thirds of the period between the date of the PTPH and the date that the first day of the trial is listed for. This fee is set at 50% of the basic trial fee for the band of offence. A cracked trial fee is payable where there is a plea in the final third of the period between the date of the PTPH and the date that the first day of the trial is listed for. This fee is set at 85% of the basic trial fee for the band of offence.

Reforming the fee structure for electable, either way cases heard in the Crown Court - LAR

898. This policy aimed to more closely align the fee for guilty pleas in either way cases for the varying venues. The LAR IA estimated this measure would reduce the legal aid fund expenditure by around £25m per annum. Based on 2017-18 data, it is estimated that this policy has saved around £20m per annum, largely due to a reduction in the volume of triable either way cases.
899. The IA suggested that this change would push more either way cases towards the magistrates' courts. In practice, the proportion of either way cases that remain in the magistrates' court has remained steady at around 86% of cases. The proportion going to the Crown Court has therefore also remained steady, although the actual volume of either way receipts in the Crown Court has reduced by 33% since 2010-11.
900. The IA also highlights the likelihood that cases which previously were cracked trials or early guilty pleas at the Crown Court would move to being full trials at the Crown Court, or contested cases at the magistrates' court. Using LGFS bills as a proxy for Crown Court cases, Figure 9 highlights that the proportion of cases that are trials has increased from 15% at 2012-13 to 19% in 2017-18. In comparison, the proportion of guilty pleas has decreased (37% in 2010-11 down to 30% in 2017-18), whilst cracked trials has remained broadly the same (27% to 26%). However, there are other factors that could have driven these changes.

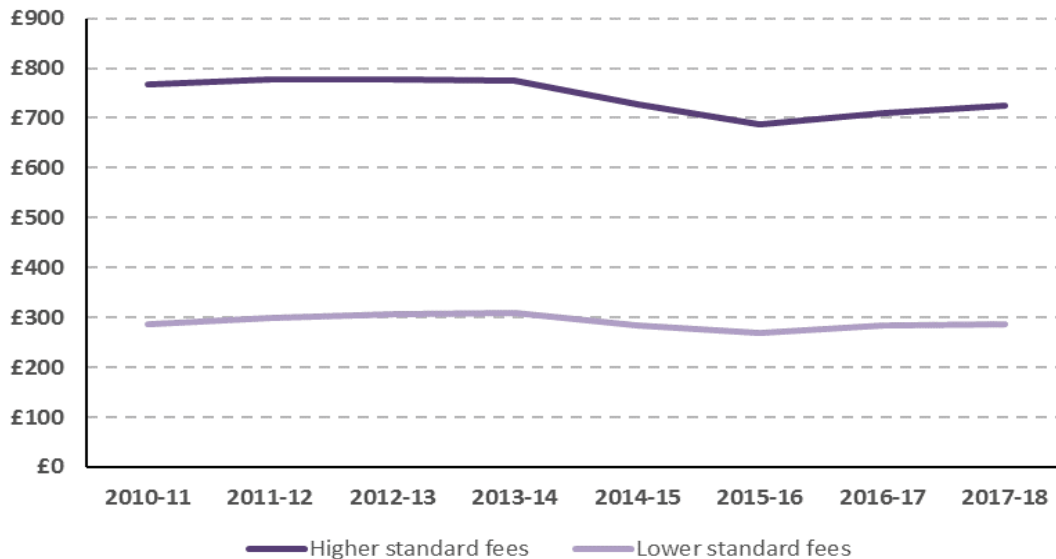
²⁷¹ These changes were introduced under Scheme 10, which came into force on 1 April 2018. The consultation On Scheme 10, and the Government's response, is available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>. The Statutory Instrument implementing these changes is available at: <http://www.legislation.gov.uk/uksi/2018/220/contents/made>

Figure 9 – LGFS: Proportion of trials, cracked trials, guilty pleas and other case types



901. The fee change was also designed to increase the fees paid for guilty pleas under the standard fee system in the magistrates’ court. Figure 10 displays the average cost of fees paid for guilty pleas in the magistrates’ court has remained fairly static since 2010-11. This is likely due to the subsequent 8.75% fee reduction for litigator fees, which will be discussed later in this chapter.

Figure 10 – average guilty plea fee for higher and lower standard fees



902. Overall, this policy has delivered savings and achieved the aim of more closely aligning the fees for guilty pleas regardless of venues. However, as the proportion of either way cases being heard in the magistrates’ court remains fairly stable, it doesn’t appear to have encouraged more either way cases to be heard in the magistrates’ court.

903. Recent AGFS changes have amended the provision of legal aid for electable cases not proceeding for reasons other than a guilty plea being entered by the defendant.²⁷² Under the current scheme, a graduated fee is payable, where (a) the prosecution offer no evidence on all counts against the defendant and the judge directs that a not guilty verdict be entered, or (b) after the defendant elects, (i) there is a substantive change to a count on the indictment and the defendant pleads guilty; or (ii) the defendant pleads guilty to one or more counts on the indictment and the prosecution offer no evidence on a remaining count, or otherwise do not proceed to trial on a remaining count. In all other cases, an enhanced fixed fee is now payable.

Align fees paid for murder and manslaughter in the LGFS and AGFS to those of serious sexual offences - LAR

904. The IA estimated that this fee change would save the legal aid fund £15m per annum. Based on 2017-18 cases, we estimate this measure has saved around £15m per annum²⁷³. This estimate has been reached by modelling 2017-18 cases under the pre-aligned LGFS and AGFS schemes. This analysis suggests spend on murder and manslaughter cases has been reduced by 20% for litigators and by 10% for advocates due to this alignment. This is slightly less than the respective LAR estimates of 24% and 12%.

905. This reduced advocate saving is partially due to increased PPE volumes, as well as changes in case mix and volumes. In cases involving cracked trials and guilty pleas advocates receive higher fees if the PPE volume is above a certain threshold (that changes for different advocate types), so the witnessed increase in PPE volumes decreases this saving for cracked trials and guilty pleas. The savings could also be less as the change in fees between murder and manslaughter and serious sexual offences can be greater in some instances for cases that involve lower volumes of PPE.

906. The average cost of murder and manslaughter cases has reduced in both the LGFS and the AGFS since this reform. In the LGFS the average cost of murder and manslaughter cases has decreased by 8% from 2010-11 to 2017-18, which can be partly associated with the 8.75% LGFS fee reduction (discussed below), as well as this policy measure. In the AGFS the average cost of murder and manslaughter cases has decreased by 16% between 2012-13 (the most recent year in which comparable data is available) and 2017-18. The difference in the movement in the

²⁷² These changes were introduced under Scheme 10, which came into force on 1 April 2018, and Scheme 11, which came into force on 31 December 2019. The consultation On Scheme 10, and the Government's response, is available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>. The consultation On Scheme 11, and the Government's response, is available at: <https://consult.justice.gov.uk/digital-communications/amending-the-advocates-graduated-fee-scheme/>. The Statutory Instrument implementing the Scheme 10 changes is available at: <http://www.legislation.gov.uk/uksi/2018/220/contents/made>. The Statutory Instrument implementing the Scheme 11 changes is available at: <http://www.legislation.gov.uk/uksi/2018/1323/contents/made>

²⁷³ Note, this saving has been rounded to the nearest £5m, as the original £15m estimates would have also been rounded to the nearest £5m.

average costs for the LGFS and AGFS is likely to be due to PPE being a more significant driver in the LGFS, in comparison with the AGFS.

907. It is important to note that the policy of aligning the legal aid fees in murder and manslaughter cases to those of serious sexual offences did not intend to produce an alignment of the actual average cost cases in these two offence groups. This is because other factors impact on the fees paid which are independent of the type of offence. For example, in the cases that closed in 2017-18, the average length of trial for murder and manslaughter cases was 13 days in the LGFS, compared to 6 days for serious sexual offence cases. Additionally, the average PPE paid in the LGFS for murder and manslaughter cases in 2017-18 was around 2,500 pages, compared to 400 pages for serious sexual offence cases. Therefore, as Figures 11 and 12 shows, the average legal aid costs in murder and manslaughter cases remain significantly higher than they do for serious sexual offence cases.

Figure 11 – average LGFS cost for murder and manslaughter cases (Class A) and serious sexual offence cases (class J)

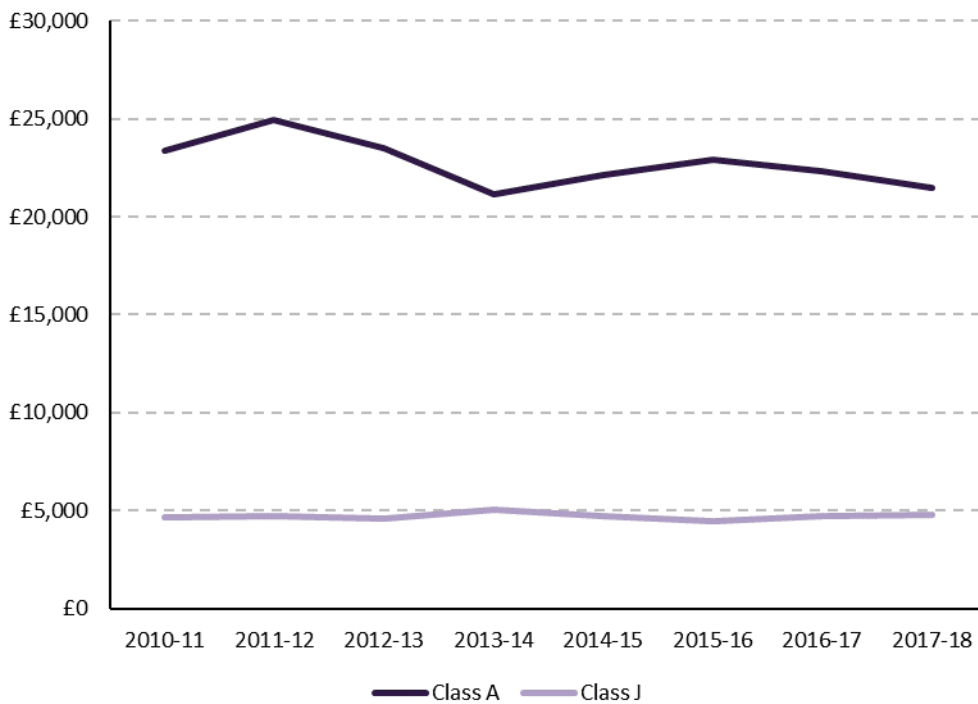


Figure 12 – average AGFS cost for murder and manslaughter cases (Class A) and serious sexual offence cases (class J)



908. The categorisation of offences was reformed by the recent changes to the AGFS, with offences being split into more detailed categories.²⁷⁴ Murder/manslaughter now forms its own category within the scheme, whereas sexual offences are divided into children and adult victims. Under the previous AGFS (Scheme 9) there were eleven different offence categories. Under the current AGFS, there are seventeen offence categories, broken down into forty-eight discrete bands, with increased fees for murder and manslaughter cases.

Combine fees for dishonesty offences to a single group paid at a lower rate - LAR

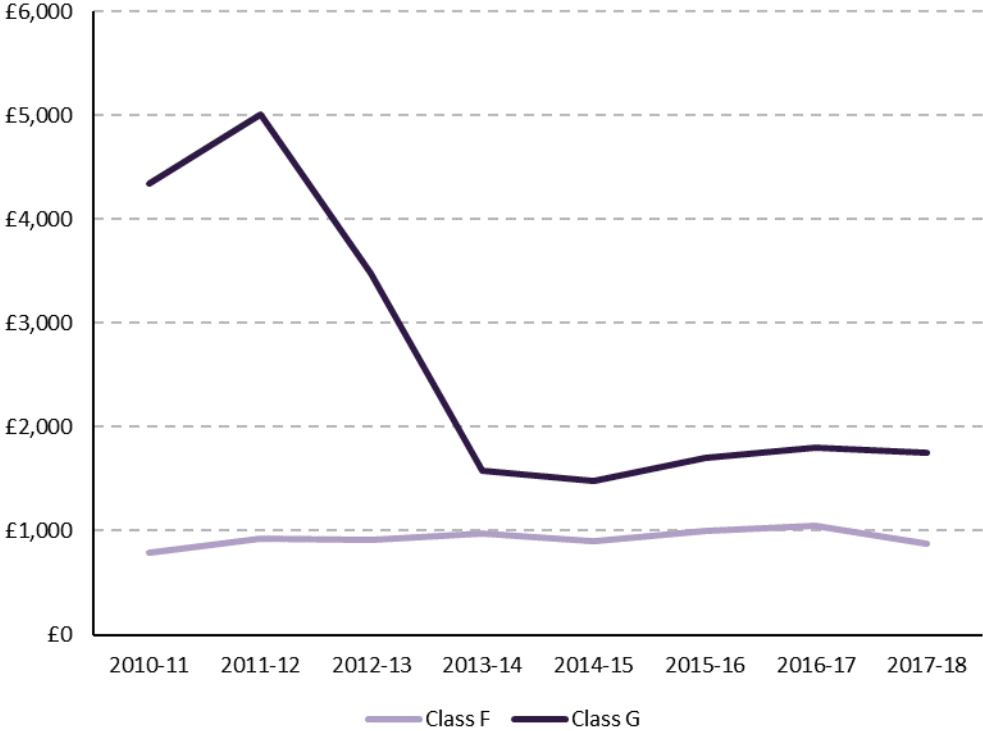
909. The IA estimated that this measure would save £4m. Based on 2017-18 cases, it is estimated this measure has saved £2m per annum. This estimate has been reached by modelling 2017-18 cases under the pre-aligned AGFS and LGFS schemes. This suggests overall spend on dishonesty offence cases has been reduced by 53% for litigators and by 39% for advocates, which is slightly higher than the respective LAR estimates of 50% and 35%. The reduction in overall savings are due to changes in volumes and case mix.

910. There has been a sharp decrease in average case costs for class G (the lowest dishonesty band) offences in both the LGFS and the AGFS – 60% and 41%

²⁷⁴ These changes were introduced under Scheme 10, which came into force on 1 April 2018. The consultation on Scheme 10, and the Government’s response, is available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>. The Statutory Instrument implementing these changes is available at: <http://www.legislation.gov.uk/uksi/2018/220/contents/made>

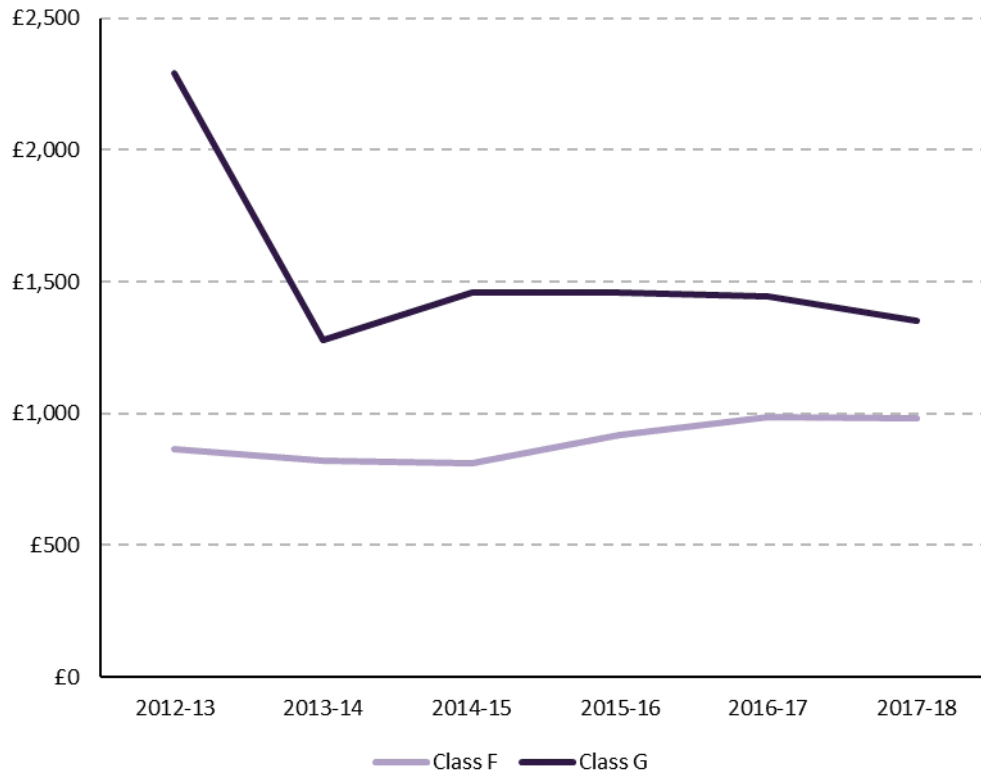
respectively.²⁷⁵ Meanwhile, the average case cost of class F offences (the middle band) remained broadly steady. This is displayed further in Figures 13 and 14.

Figure 13 – average LGFS cost for class G (offences concerning £30,000-£100,000) and class F (offences concerning less than £30,000) dishonesty offences



²⁷⁵ Data is available from 2010-11 for the LGFS, and 2012-13 for the AGFS.

Figure 14 – average AGFS cost for class G (offences concerning £30,000-£100,000) and class F (offences concerning less than £30,000) dishonesty offences



911. This policy has also been amended by the recent AGFS changes.²⁷⁶ The value of an offence has been reinstated as a key proxy for determining the fee determined under the new scheme. The current scheme divides dishonesty offences into five categories, which are as follows:

- i. Band 6.1: Over £10m or over 20,000 pages.
- ii. Band 6.2: Over £1m or over 10,000 pages.
- iii. Band 6.3: Over £100,000.
- iv. Band 6.4: Under £100,000.
- v. Band 6.5: Under £30,000.

Align magistrates’ court fees in London with other major urban areas - LAR

912. The original IA estimated that this measure would save £6m. Based on 2017-18 cases, it is estimated that this measure has saved £4m per annum to the legal aid fund.

²⁷⁶ These changes were introduced under Scheme 10, which came into force on 1 April 2018. The consultation on Scheme 10, and the Government’s response, is available at: <https://consult.justice.gov.uk/digital-communications/reforming-the-advocates-graduated-fee-scheme/>. The Statutory Instrument implementing these changes is available at: <http://www.legislation.gov.uk/ukSI/2018/220/contents/made>

913. Data collection undertaken by Otterburn Legal Consulting in 2012, which preceded the attempted introduction of competitive tendering for criminal legal aid, highlighted that profit margins in London were particularly tight.²⁷⁷
914. The number of offices in London that are undertaking crime lower legal aid work has declined by 15% since 2012-13, but this also includes police station work, as well as the magistrates court. This could be due to market consolidation and providers restructuring to take account of efficiencies.
915. However, as discussed previously, since LAR and LAT there has been a steep decrease in legal aid volumes in the magistrates' court with legal aid grants having decreased from around 430,000 to 235,000 between 2010-11 and 2017-18 (45%).
916. From the LAA data available it appears the current status is that there remains sufficient solicitors in London to undertake criminal legal aid-funded cases. The LAA monitors the availability of criminal legal aid provision on an ongoing basis. Where issues are identified action is taken to ensure there is ongoing availability of criminal legal advice for the public.

Reduce ancillary payments to advocates ('bolt-on' payments) - LAR

917. The original IA estimated that this measure would save £9m for the legal aid fund. Based on 2017-18 cases, it can be estimated this measure has saved £5m per annum. The reduced saving is likely to be as a result of reduced volumes in 2017-18 when compared to the baseline year.
918. In attempting to more accurately reward 'work done', the recent AGFS changes have altered the fee scheme for bolt-on payments. In essence, the current AGFS 'unbundles' many of the previously 'bundled payments' (standard appearances, PTPHs etc.) to make them 'bolt-on' payments again.²⁷⁸

8.75% reduction to solicitor fees - LAT

919. The original IA states that the full 17.5% reduction in solicitor fees would lead to a reduction in spend of £120m in the steady state. This approximates to £60m for the single 8.75% fee reduction that was implemented and remained in force. Based on 2017-18 cases, it is estimated the 8.75% fee reduction saved the legal aid fund around an estimated £50m per annum.²⁷⁹ As discussed at paragraph 850, the increased average PPE in Crown Court cases means that the 8.75% reduction to remuneration under the LGFS has been largely offset as the total expenditure has increased (Figure 15). However, as Figure 16 and 17 shows, the reduction can be observed in both the expenditure for police station advice and magistrates court representation, where PPE has no influence.

²⁷⁷ See: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/otterburn-legal-consulting-a-report-for-the-law-society-and-moj.pdf> p5.

²⁷⁸ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683419/agfs-consultation-response.pdf

²⁷⁹ This has been estimated by assuming all of the 2017-18 cases that the 8.75% reduction applied to only had the single 8.75% reduction, and calculating the cost created by reversing it.

Figure 15 – Average case cost of LGFS

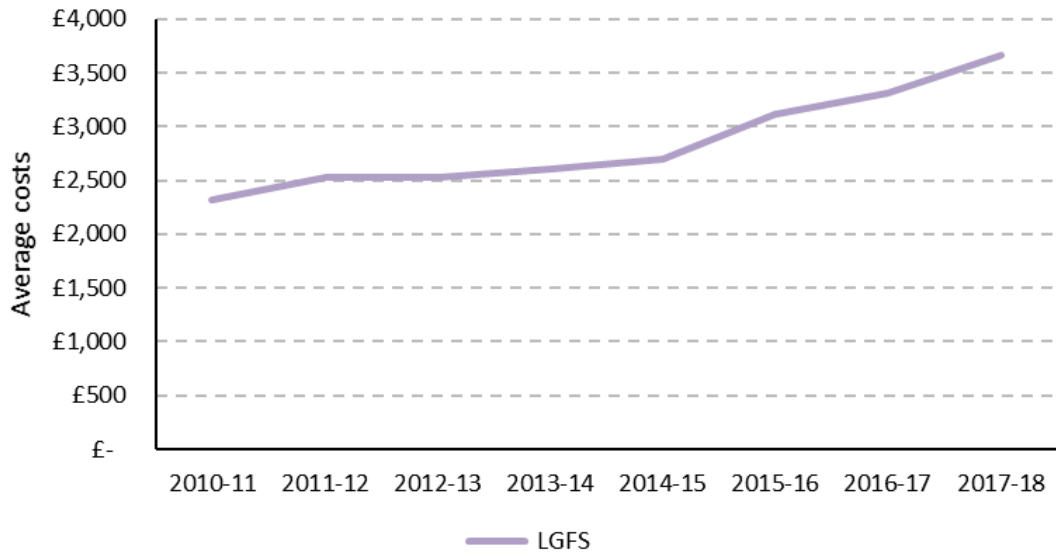


Figure 16 – Average case cost of police station advice

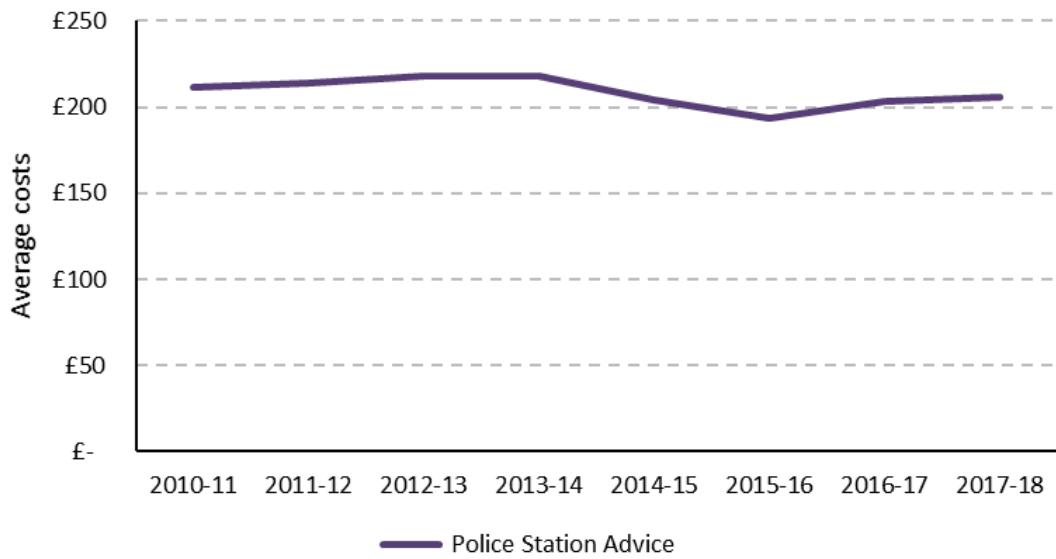
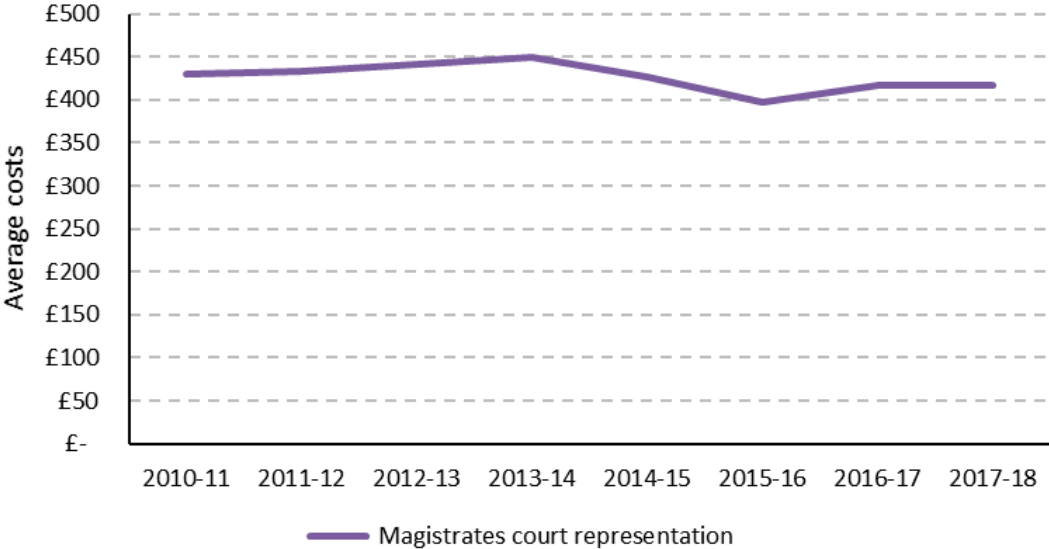


Figure 17 – Average case cost of magistrates’ court legal aid



Reducing the use of multiple advocates in criminal cases - LAT

920. This policy was designed to prevent the use of multiple advocates where it was unnecessary. The IA estimated that this policy would save £10m for the legal aid fund.²⁸⁰

921. Using 2017-18, it is estimated that this policy has saved the legal aid fund £4m per annum. To estimate the cost of the policy, the reduction of multiple advocate caseload resulting from this reform has been estimated, and then multiplied by a 2017-18 led junior unit cost. The fall in the use of multiple advocates is less than expected, with around 300 cases per annum impacted by the policy, compared to 700 cases estimated in the IA. This is partly due to the overall fall in volumes in the Crown Court. Consequently, the overall saving per annum is less than half of the estimated £10m.

922. The Jeffrey Review, an independent review of criminal advocacy in England and Wales published in May 2014, highlighted that this policy has removed ‘opportunities for young, aspirant barristers to develop their skills by working closely with a QC or other senior member of the profession, and seeing them in action.’²⁸¹ This was also raised as a concern by the Criminal Bar Association during the [criminal] consultative group meeting.

²⁸⁰ It was assumed there would be a 50% reduction in cases with multiple advocates, and the most senior advocate would remain in such cases (either as a QC alone or as a junior alone). As they had no way of knowing what case types would reduce to single advocates, cases were randomly selected in their data and this was flagged as a risk.

²⁸¹ See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310712/jeffrey-review-criminal-advocacy.pdf para 5.18

Harmonise payments in VHCC for cases expected to take up to 60 days at trial – VHCC change

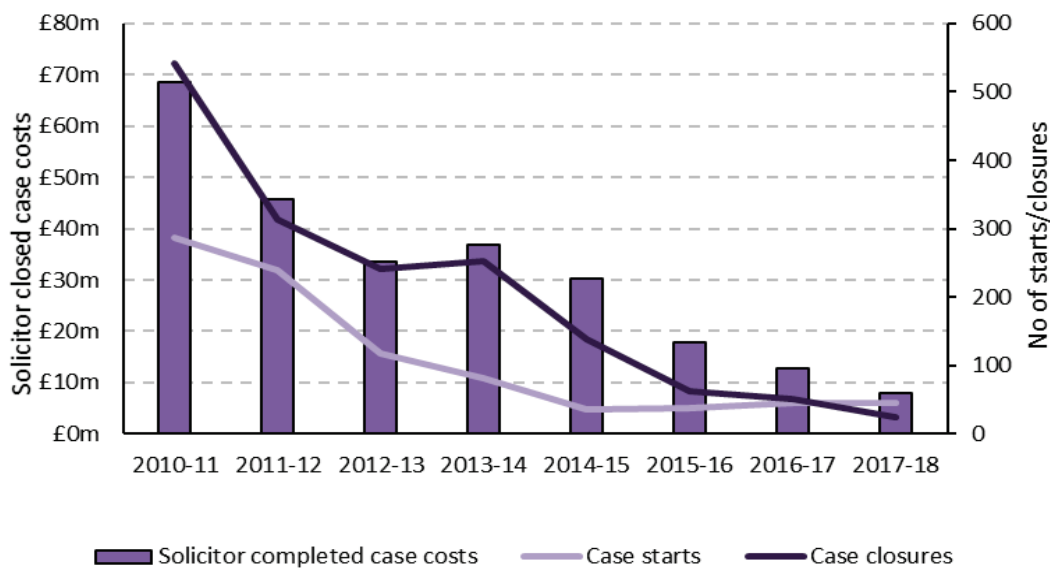
923. The measure was designed to align the scope of the VHCC for both litigators and advocates, meaning any case with an expected trial length of more than 60 days would be paid under a VHCC contract. The policy led to more cases falling into the remit of the LGFS and by doing so it was estimated in the IA that the lower rates would save the legal aid fund £3m per annum. Based on 2017-18 cases, it is estimated that the measure has saved around £3m per annum.
924. There were 150 LGFS bills in 2017-18 with trial lengths greater than 40 days. To estimate the savings from this reform we have estimated how many of these cases would have previously been paid under VHCC rates. In 2010-11 (prior to this reform) only around 47% of LGFS and VHCC cases with trial lengths between 41-60 days were paid as VHCCs²⁸², whilst 94% of cases > 60 days were paid as VHCCs. Considering 130 2017-18 LGFS bills had trial lengths between 41-60 days and 20 were greater than 60 days, it has been assumed 52% (around 80 cases) would have previously been paid under VHCC rates, which is slightly lower than the LAR IA estimate of 100 cases.
925. Although the affected volumes are now estimated to be lower, the overall unit savings are greater. By comparing the average cost of 2010-11 LGFS cases with trial lengths between 41-60 days against the average cost of VHCC cases in 2010-11 and 2009-10 with trial lengths between 41-60 days, it suggests the VHCC bills were around 43% more expensive than the LGFS bills²⁸³. This is likely to be slightly higher than the cost differential assumed in the LAR IA, which would have been based on data prior to 2010-11. After accounting for previous reforms in the 2017-18 cost data, it has been assumed the affected LGFS cases would have been 43% more expensive if they were paid under VHCC rates instead. This leads to estimated savings of around £3m per annum.
926. There has been a sharp decrease in the number of VHCC contracts starting and closing and the completed contract costs for solicitors, which has decreased overall VHCC spend over time. In 2010-11, the full last year prior to this change, 290 new contracts opened. In 2011-12, the transition year, the number of new contracts opened dropped to 240, and in 2012-13, the first full year following the change, the number of contracts opened dropped to 120. Since then, the number of contracts opened has continued to fall. In 2017-18 only around 50 VHCC contracts were opened, a fall of 84% from the original 2010-11 figure.
927. However, the change to the estimated trial duration criteria is not the only factor that is influencing these trends. In the context of overall falling volumes, the case mix has changed over time, and there are also behavioural habits to consider (which cannot be quantified). For instance, initiatives such as BCM may be leading to greater efficiencies by listing fewer cases for extremely long durations.

²⁸² This percentage is relatively low as qualifying for VHCC rates is based on expected trial length rather than actual trial length.

²⁸³ There are low volumes of LGFS and VHCC cases with actual trial lengths between 41-60 days making the average costs sensitive to the cases taken forward in that year. This means the overall cost differential is particularly uncertain, but it is a useful high-level estimate.

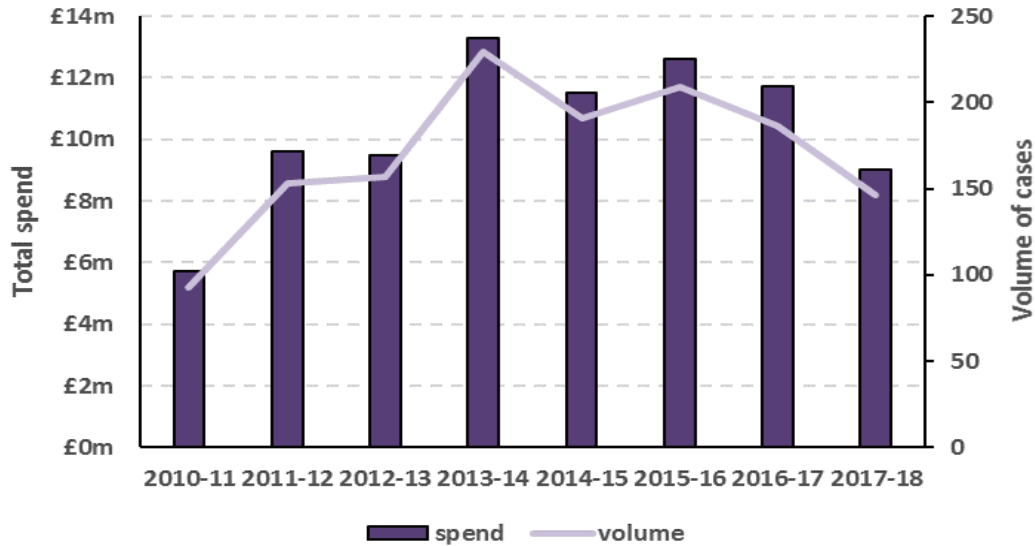
928. The change to the estimated trial duration criteria is not the only factor that is influencing these trends. In the context of overall falling volumes, the case mix has changed over time, and there are also behavioural habits to consider (which cannot be quantified), such as the drive for greater efficiency through case management.
929. Over the same period the total value of solicitor costs for completed contracts dropped from £70m to £10m – a fall of 89%. It is also important to note that the VHCC data has traditionally been volatile and can be skewed by a handful of extremely high cost cases. The long duration of the cases makes it even more difficult to ascertain any concrete trends, as cases often take years to complete.

Figure 18 – litigator VHCC closed case spend and volumes



930. As expected, there has been an increase in cases now falling under the LGFS with actual trial lengths greater than 40 days: from 90 in 2010-11 to 150 in 2017-18, with a peak at 230 cases in 2013-14, whilst overall LGFS volumes have fallen.

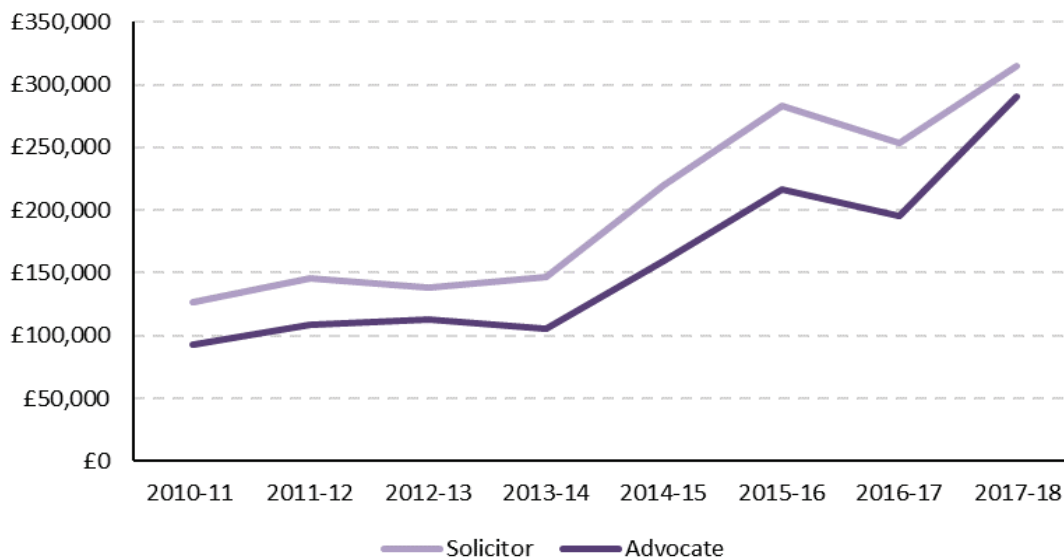
Figure 19 – LGFS spend²⁸⁴ and volume on cases with 41 or more trial days, excluding VAT and disbursements



931. When investigating the mix of cases in closed case VHCC bills, the proportion of fraud cases has steadily increased from around 50% in 2010-11 to around 90% in 2017-18. This is within the context of the dramatic drop of overall volume of cases that are now eligible for VHCC funding – so whilst the proportion has increased, the overall number of fraud cases falling under the VHCC scheme has dropped from around 260 in 2010-11 to around 20 in 2017-18.
932. Figure 20 shows that the average case cost for VHCCs has increased. Now that only the longest trials qualify for VHCC remuneration this has likely driven up the average cost, as well as changes in case mix. This is true for both litigators and advocates, despite the 30% reduction in 2013-14, which has been discussed below. However, due to low volumes in later years the average costs can be highly volatile.

²⁸⁴ Excluding VAT and disbursements

Figure 20 – average case cost for VHCCs



933. During the consultative group meetings, organisations provided evidence and views regarding the impact of VHCCs on the professions. The Bar Council and the Criminal Bar Association raised concerns regarding the decline in volumes of VHCCs, and the impact this has had on the future generation of legal aid lawyers, who are becoming decreasingly exposed to these high-profile cases. It was said that VHCCs are an important development opportunity for junior barristers, who are now no longer accessing the project management aspect of being involved in such long, high-profile cases.

934. Overall this policy provides consistency across the wider criminal fee schemes, and are broadly consistent with the savings estimated in the LAR IA. As touched upon previously, the significant decline in VHCCs has been partly responsible to this change in criteria (with regards to case duration), as well as a number of different factors.

30% reduction in VHCC fees – VHCC

935. Although it can only be estimated roughly, this policy has not met the savings estimated in the IA, because the number of VHCC cases is now so low.

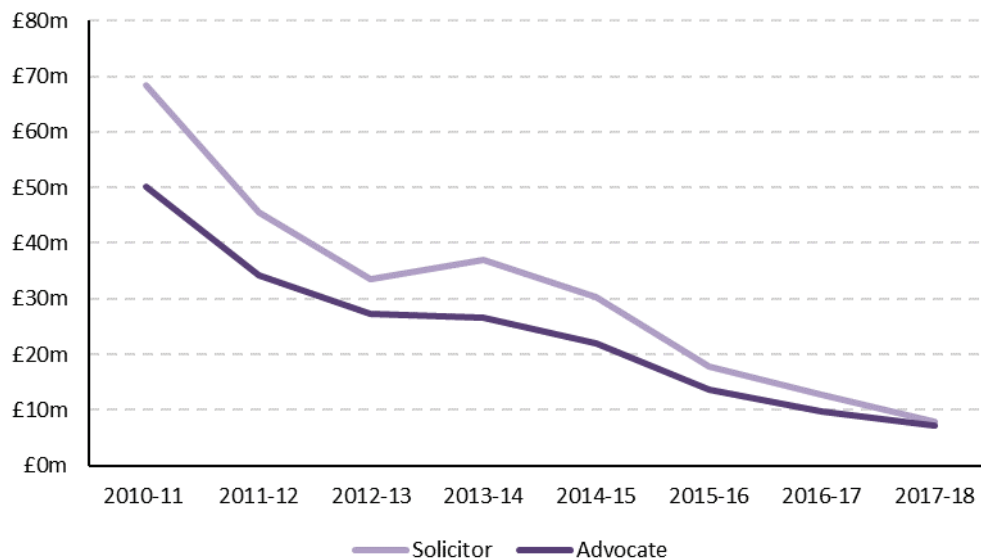
936. When estimating the savings of the 30% fee reduction, two important caveats must be made. Firstly, there is only a very small number of cases that now qualify for remuneration under the VHCC scheme. This can lead to huge volatility in VHCC costs depending on the year being considered. Secondly, the cases that do qualify as VHCCs have extremely long durations, and many of those that have been opened since the introduction of the 30% fee reduction are still yet to close. The unpredictability of the duration of the case can therefore skew the data, making it very difficult to estimate the total savings that this fee change has made.

937. However, with these restrictions in mind, we can estimate the amount saved by introducing the 30% fee reduction. The original IA estimated that this change would save around £20m per annum, consisting of £12m for litigators and £8m for

advocates.²⁸⁵ By examining the expenditure on litigators in VHCC closed cases in 2017-18 that were subject to the 30% fee reduction, the additional spend in 2017-18 would have been around £1m, had this policy not been implemented. For advocates it is more difficult to provide an estimation, due to the introduction of the IFFO scheme. By similarly looking at the spend on advocates on VHCC closed cases in 2017-18 that were subject to the amended regulations coming into force on 2 December 2013, the additional spend in 2017-18 could have been around £2m greater. However, due to the level of negotiations that usually follow the initial fee offer, this saving could be more, or less. The savings are lower than the estimates in the IA because of the vast reduction in the volume of VHCCs over time. As discussed in the methodology section, constant volumes and case mixture were assumed in the LAR and LAT IAs to estimate savings. This has been discussed in more detail above, when the harmonisation of VHCCs was considered.

938. Figure 21 shows expenditure on VHCCs has dropped dramatically, by 87% since 2010-11. This is due to a number of factors, including the harmonising of payments (discussed above), but particularly the general reduction in volume of cases and the lag for cases still ongoing waiting to close. There are also a number of other factors that play a part, such as the drive for greater efficiency through case management. Furthermore, with rising costs in the graduated fee schemes, particularly through the LGFS with the rising influence of PPE, the VHCC scheme may have become less attractive for providers, who might be more accepting of a lower trial day estimate.

Figure 21 – closed case expenditure on VHCCs



Conclusion – making significant savings to the cost of the scheme

939. Overall, the LAR and LAT remuneration changes have delivered significant savings for the cost of the scheme. The most high-profile and significant saving was achieved by the 8.75% fee reduction for solicitors’ fees, but the reforms to fees for guilty fees and cracked trials has also contributed significantly.

²⁸⁵ This was based on 2012-13 data (cash expenditure rather than closed case expenditure) and assumed that the case mix and volume of cases would remain stable.

Discouraging unnecessary and adversarial litigation at public expense

940. The purpose of the fee changes reform was not to discourage unnecessary and adversarial litigation at public expense.

Targeting legal aid to those who need it most

941. The fee changes did not attempt to target legal aid at those who need it most, but this will be discussed in more detail in the prison law and eligibility sections of this chapter.

Delivering better overall value for money for the taxpayer

942. As outlined above, the criminal legal aid fee changes have brought about significant savings to the LAA and thus have achieved economy. The estimated total savings are broadly in line with those expected in the IAs, after taking account of changes in volumes and case mix. Therefore, these fee reductions have been effective in achieving their main objective; economy. As criminal legal aid is largely demand led, people in need of and qualifying for legal aid have not been prevented from doing so as a result of these fee reductions, so equity is unaltered. Therefore, it seems reasonable to say that this set of policies represents better overall value for money for the taxpayer.

943. It has been argued that if the changes have caused long-term sustainability issues for the legal aid market, the criminal fee changes might not deliver greater overall value for money for the taxpayer. The data available suggests that current provision is sufficient and more research is required to consider the long-term future for how legal aid services are best delivered.

944. The following section provides more detailed analysis regarding the criminal legal aid market, focusing on key themes and assertions that were raised during the evidence gathering phase.

Sustainability of the market

945. During the evidence gathering phase it was asserted that the criminal remuneration changes had cumulatively impacted on the sustainability of the criminal legal aid market. As such, this section of the chapter will consider how the changes as a whole have impacted on the criminal legal aid market. The impact on the civil and family legal aid market has been considered in chapters 1 and 3.
946. Interested parties submitted evidence, based on their experience, regarding the ageing workforce that undertakes legally aided work, as well as difficulties regarding recruitment and retention in the professions. We are conscious of the need to ensure sufficient provision in the long-term, in so far as it is a matter for the Government. As such, the Government announced in December 2018 that we will be spending an additional £23m per annum (based on 2016-17 cases) on the AGFS scheme. More research is required to consider the long-term sustainability of the profession, although data suggests that the coverage and supply of provision is currently sufficient.
947. The Jeffrey Review remarked that due to falling volumes of criminal legal aid work there was substantially less work to be done, but that the market was oversupplied.²⁸⁶
948. Analysis completed by Otterburn Legal Consulting, which preceded the attempted introduction of competitive crime tendering, also highlighted that falling volumes pose the most potent challenge to the financial viability of criminal legal aid practices.²⁸⁷ However, the analysis did also make claims regarding the financial vulnerability of the criminal legal aid market, with 5% of firms estimated to be at high risk of financial difficulty and 45% of firms estimated to be facing a medium risk.
949. The Bar Council, in their ‘5 years on’ survey of barristers, concluded that 48% of respondents are doing less legal aid work since LASPO, compared to 4% who have increased their legal aid workload. 43% of respondents said that their practice had been substantially affected. The survey also concludes that there has also been a substantial decline in the proportion of barristers whose fee income was predominantly made up of legal aid work, declining from 33% pre-LASPO to 19%. Their survey does not separate respondents doing criminal and civil work, however they do comment ‘the unsustainably low fees for criminal legal aid work remain a serious problem, which has been raised by the Bar Council and Criminal Bar Association on multiple occasions.’²⁸⁸
950. Evidence was submitted by the Law Society regarding the impact of the 8.75% fee reduction on the profitability and suitability of working in the criminal legal aid

²⁸⁶ Sir Bill Jeffrey. 2014. *Independent criminal advocacy in England and Wales*. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310712/jeffrey-review-criminal-advocacy.pdf

²⁸⁷ Otterburn Legal Consulting. 2014. *Transforming Legal Aid: Next Steps*. See: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/results/otterburn-legal-consulting-a-report-for-the-law-society-and-moj.pdf>. To note, the Otterburn Report focused largely on litigators.

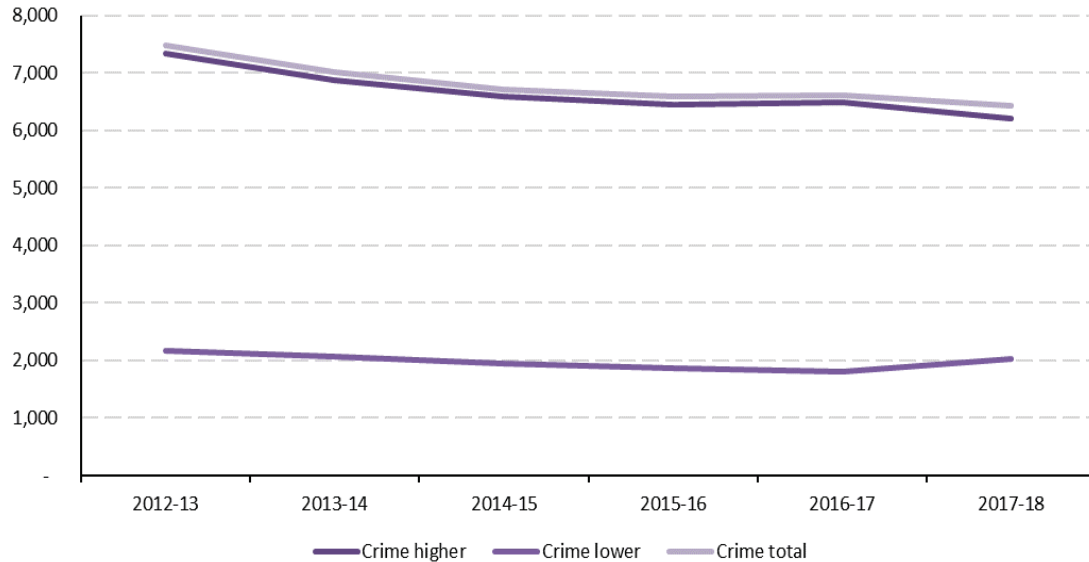
²⁸⁸ Bar Council. 2018. *Five years on, evidence submission to this review*, p.35. See: <https://www.barcouncil.org.uk/media-centre/news-and-press-releases/2018/october/bar-council-laspo-has-failed/#>

market. It is asserted that 'we [providers] are constantly doing more to achieve less.'²⁸⁹ As such, they argue that this is not only lowering profit margins, but also increasing the likelihood of providers experiencing stress and anxiety. As such, providers are argued to be turning to other careers or employers (such as the CPS), instead of defending clients funded by legal aid. This was also supported by the Criminal Law Solicitors' Association, who said that providers in the magistrates' court 'have no time to breathe', to meet the volume of work needed to sustain income.

951. During the evidence gathering phase providers suggested that the fee changes had made the criminal legal aid market financially unattractive, or even unviable. The Criminal Bar Association, during the consultative group meetings, provided anecdotal evidence regarding chambers that have a history of providing large volumes of legal representation dropping out of the market and leaving a void of experienced providers. Furthermore, the Law Society reported that they are not aware of any instances where a criminal legal aid lawyer could not be resourced, but if rates are not improved this will be the case within two to three years.
952. The total expenditure on criminal legal aid work has reduced by 16% since 2012-13. However, the average income per criminal legal aid provider has remained at a similar level since 2012-13 (reducing by 3% from 2012-13 to 2017-18), as the number of providers has fallen at a similar rate to the reduction in total income (-14%). A legal aid provider may consist of a large firm with several offices around the country, a single office location or a self-employed barrister. The term 'provider' has been used throughout to refer collectively to solicitor offices and self-employed barristers. All the figures in this section represent income from criminal legal aid work only – providers which appear in this section to do small amounts of work may have other sources of income, such as from CPS work, or from other areas of law.
953. It is possible that the reduction in providers will not wholly be a consequence of providers leaving the market, but offices merging together. There will also be external factors that impact upon providers that cannot be controlled, and so the trends may not be entirely attributable to the reforms.
954. The number of providers doing criminal legal aid work has fallen by 14% overall. Figure 22 suggests that most providers doing legally aided criminal work are doing crime higher work, although this has fallen 15% between 2012-13 and 2017-18. The number of offices doing crime lower has fallen 7% since 2012-13. There was a rise in the number of offices doing crime lower work in 2017-18, due to new contracts which came into force in April 2017, which has offset the decline in recent years. There is a larger volume of providers doing crime higher work as this analysis has counted each self-employed barrister as a provider, and they tend to do crime higher work. Therefore, numerically, crime higher has a lot of individual barristers which make up a lot of provider volume, while solicitors firms may employ a greater number of people but only count as one provider.

²⁸⁹ Law Society. 2018. *Evidence submission to this review*. See Annex 8: of the Law Society's evidence submission. See: <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/ministry-of-justice-laspo-part-1-post-implementation-review-law-society-response/>

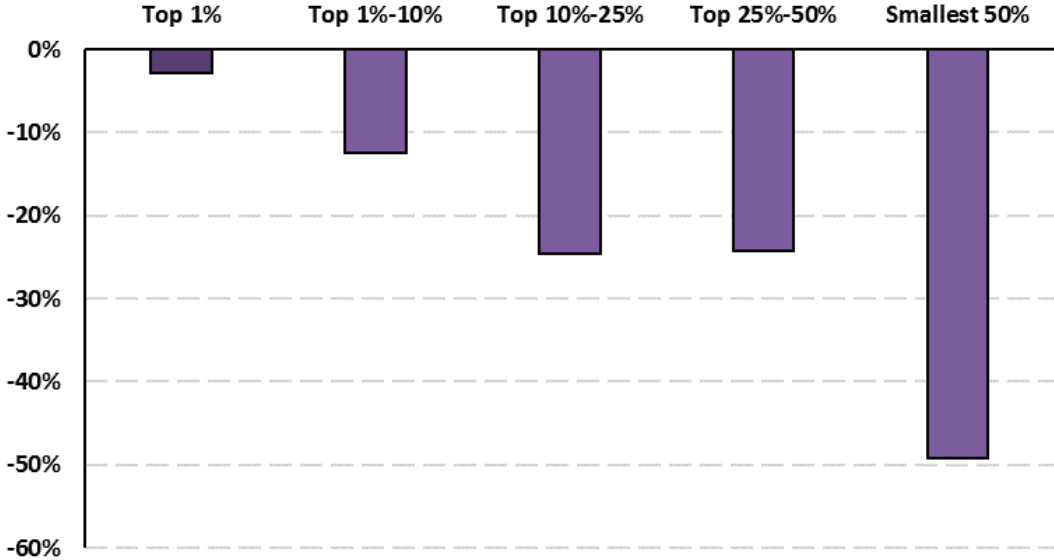
**Figure 22 – number of providers completing crime work²⁹⁰
2012-13 to 2017-18**



955. We can look at the impact of the reforms on providers according to the amount of legal aid work they do. To do so, providers have been grouped based on their legal aid income in 2012-13 and tracked to see how many were still completing legal aid work in 2017-18. The providers that completed a large amount of legally aided criminal work were more likely to still be completing legally aided criminal work following LASPO, compared to those that completed smaller amounts of work. This is presented in Figure 23.

²⁹⁰ Note that providers can do both crime lower and crime higher so the sum of crime lower and crime higher provider numbers will not add up to the number of total providers doing crime legal aid work.

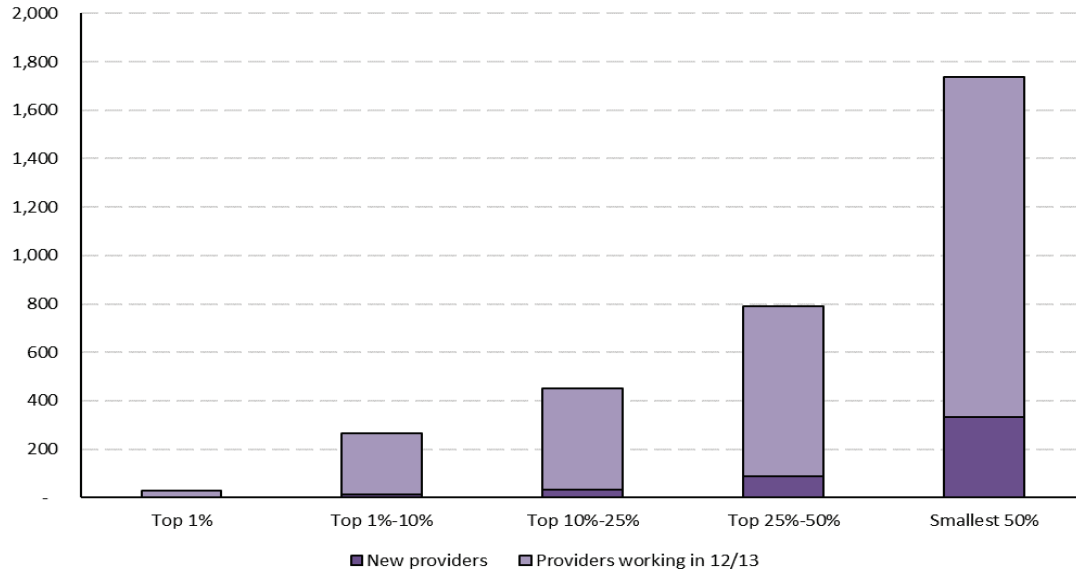
Figure 23 – percentage reduction in providers doing criminal legal aid work in 2017-18, grouped by market share in 2012-13



956. A large number of crime providers of all sizes moved income value band between 2017-18 and 2012-13. For example, 34% of the providers that were in the top 25-50% of criminal providers in 2012-13 moved down a value band to the smallest 50% in 2017-18. There are also providers that have increased the amount of work they are doing and moved up a value band since LASPO, although this appears to be less common. This is not surprising, as the overall number of providers has fallen so have the number of providers in each size band, so providers are more likely to move down a value band than up.

957. The majority of new providers in the criminal legal aid market are small, however, they are proportionally fairly well spread across size bands, comprising of over a quarter in each of the smallest 50%, top 25-50% and top 10-25% bands. Figure 24 presents this as a graph. It is possible that these providers had done work in the years prior to 2012-13 and therefore are not ‘new providers’ per se, but did not do work in 2012-13 and so did not show up in our reference points.

Figure 24 – providers doing crime work in 2017-18 (grouped by income size), clustered by whether they worked in 2012-13 or were new providers



958. Although the volume of work and the number of providers in the market has reduced, the distribution of work (based on total value of work) across legal aid providers of different sizes has remained steady. Figure 25 shows that the work is still being undertaken in similar proportions, with a maximum of one percentage point change.

Figure 25 – criminal legal aid market share

Size of provider	2012-13	2017-18
Top 1%	11%	10%
Top 1%-10%	37%	37%
Top 10%-25%	23%	24%
Top 25%-50%	14%	14%
Smallest 50%	15%	15%

959. The data can also be used to see the type of work that providers are doing. Figure 25 shows that of the providers doing a mixture of civil and criminal work in 2012-13, 34% have now moved to doing mostly or completely criminal work, whereas 25% have moved to doing mostly or completely civil work.

**Figure 26 – type of work completed by providers, pre- and post-LASPO
2012-13 to 2017-18**

		2017-18					
		No/little work ²⁹¹	All Civil	Mostly Civil	Mix of Civil and Crime	Mostly Crime	All Crime
2012-13	No/little work ²⁹²	52%	9%	0%	0%	0%	38%
	All Civil	51%	48%	1%	0%	0%	0%
	Mostly Civil	19%	30%	36%	8%	4%	2%
	Mix of Civil and Crime	23%	11%	23%	23%	16%	4%
	Mostly Crime	22%	4%	9%	11%	33%	21%
	All Crime	36%	0%	0%	0%	1%	63%

Future generations of legal aid lawyers

960. Participants in the evidence gathering phase also explained the difficulty recruiting and retaining the next generation of legal aid lawyers, and the problems this would create when the current generation of providers move towards retirement. Current provision appears adequate, although more research is required regarding the long-term future for the professions, and whether the current remuneration schemes are the most effective at ensuring supply continues to meet demand. Moreover, we recently increased overall funding on the AGFS by £23m against 2016-17 spend, focusing much of this additional spending on more junior advocates. Alongside this, we also announced a fundamental review of all criminal legal aid fee schemes.
961. Young Legal Aid Lawyers submitted evidence regarding the inability of providers, due to fee changes, to provide recruitment opportunities such as training contracts and/or pupillages and as such barriers are created that prevent aspiring legal aid lawyers from entering the profession.²⁹³ Many aspiring lawyers now need to enter the profession via low-paid internships, or lengthy spells as paralegals. It is argued that these barriers, coupled with the high levels of tuition fee debt, have turned many future legal aid lawyers away from joining the profession.
962. The Law Society have conducted a survey of the age of criminal legal aid duty solicitors around England and Wales.²⁹⁴ The key conclusion is that the average age of duty solicitors is 47, and in many regions the average is higher. The study also displayed the geographical distribution of the average age, which has been discussed below.
963. The Criminal Bar Association asserted that there was a ‘recruitment and retention crisis’. A representative from The Criminal Bar Association at the consultative group meetings suggested that the best advocates are leaving to pursue more lucrative careers, and only those from more privileged socio-economic backgrounds can sustain themselves from legal aid work.

²⁹¹ Less than 1% of the average work done by a provider.

²⁹² This row also includes providers new to the market, i.e. providers that did legally aided work in 2017-18 but 0 legally aided work in 2012-13.

²⁹³ <http://www.younglegalaidlawyers.org/socialmobilityreport2018>

²⁹⁴ <http://www.lawsociety.org.uk/policy-campaigns/campaigns/criminal-lawyers/>

964. As a result, concerns were raised regarding not only the economic sustainability of the criminal legal aid market, but also the future recruitment (and the social diversity) of the judiciary. The recent report from the Justice Select Committee concluded that ‘the current difficulties in recruitment to the Criminal Bar could potentially have a negative impact on future recruitment to, and diversity within, the judiciary – in particular, for judicial office holders in the criminal courts.’²⁹⁵
965. The Legal Aid Practitioners Group also provided anecdotal evidence that because of the fee changes and the difficulty in practising in the criminal legal aid market, many experienced providers are making the move to the judiciary earlier and consequently the void of the next generation of criminal legal aid lawyers is deepening.
966. The information collected on the demographic background of providers is limited to periodical surveys of the managerial level of solicitors’ offices with legal aid contracts, rather than those carrying out legal aid work. A survey was carried out by the Legal Services Research Centre in 2011²⁹⁶, and subsequently a survey was carried out by the LAA in 2015²⁹⁷. In the 2015 survey, 51% of those with managerial control of offices with crime contracts were over 50.²⁹⁸ This is a larger proportion than in the 2011 survey, which reported 42%.
967. With regards to other demographic characteristics, for ethnicity, the 2015 survey reported that 15% were from an ethnic minority²⁹⁹ background. In the 2011 survey, 18% were reported to be from an ethnic minority background. For gender the 2011 survey reported on the proportion of offices by majority control of gender – 69% had majority male, 14% had majority female and 17% had split managerial control. In 2015 the proportions were very similar, with 70% majority male, 14% majority female and 16% split managerial control³⁰⁰.

Geographical coverage of provision

968. The Law Society’s survey of duty solicitors also considers the geographical spread. In many areas (Dorset, Somerset, Wiltshire, Worcestershire, Mid Wales and West Wales) over 60% of duty solicitors are over 50 years old, whilst in Cornwall, Norfolk, Suffolk, and Worcestershire, there are no duty solicitors aged under 35. In comparison, across the whole solicitors’ profession, only 27% of solicitors are aged over fifty. They argue that whilst this has not led to gaps in provision yet, when the existing practitioners retire or leave the profession, there will be an inability to fill the gap, particularly in these areas.

²⁹⁵ Justice Select Committee. 2018. *Review into Criminal Legal Aid*.

<https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1069/106902.htm>

²⁹⁶ Routine Diversity Monitoring of the Supplier Base, Legal Services Research Centre. 2011. This surveyed 4,525 providers (both civil and criminal offices), and got valid 1,739 responses (a response rate of 38%).

²⁹⁷ Participation in the survey was not mandatory, out of 2,262 providers invited to take part (both civil and criminal offices), 644 provided valid responses (a response rate of 28%).

²⁹⁸ This excludes those for whom age was not reported, or preferred not to say

²⁹⁹ This includes all who are not white British

³⁰⁰ In both the 2011 and 2015 surveys some offices are excluded where it cannot be determined which gender has majority managerial control

969. Although current levels of provision of criminal legal aid is sufficient, there is some discrepancy regarding the depth of providers across the country. However, this has historically been the case. The Legal Aid Agency monitors the availability of criminal legal aid provision on an ongoing basis. Where issues are identified, action is taken to ensure there is ongoing availability of criminal legal advice for the public.

970. The LAA data can also highlight the geographical spread of providers across England and Wales. There has been a general reduction in the number of providers, with Eastern (-31%) and South West (-28%) showing the largest falls. However, this needs to be viewed in the context of falling volumes, which can also be considered in Figure 27.

Figure 27 – number of providers, case volumes and average income per criminal legal aid provider for each LAA region – 2012-13 to 2017-18

	Number of providers	Change in volume of cases	Change in average income per provider
East Midlands	-16%	-22%	3%
Eastern	-18%	-29%	-7%
London	-15%	-28%	7%
Merseyside	-13%	-31%	7%
North East	-13%	-31%	3%
North West	-10%	-38%	-5%
South	-15%	-33%	-12%
South East	-13%	-29%	-12%
South West	-21%	-33%	-8%
Wales	-18%	-22%	-1%
West Midlands	-9%	-27%	-4%
Yorkshire and Humberside	-4%	-27%	0%
Total	-14%	-24%	-3%

971. With regards to solicitors, the LAA awarded approximately 1,300 standard crime contracts in 2017, applying to approximately 2,000 offices. In terms of gaps in the availability of legal advice and representation, the status is that there are sufficient providers to undertake criminal legal aid-funded cases.

972. With regards to advocates, around 4,300 bills were paid to individual advocates in 2017-18. This has fallen by around 12% since 2012-13, where 4,900 bills were paid to individual advocates. This is less than the 20% reduction in overall AGFS volumes over the same period. This analysis is based on LAA account numbers. In general, each advocate has their own account number but there are exceptions, such as where employed advocates use the account number of their office or employer firm. There are also instances where multiple advocates have had claims processed under the same account number. For further details on our response to this, please refer to the accompanying Action Plan.³⁰¹

³⁰¹ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

4.3 Scope Changes – Prison Law

Policy Summary

973. Prior to LASPO, legal aid was available for a number of areas of prison law. This allowed prisoners to seek Advice and Assistance, including Advocacy Assistance, on matters relating to treatment, sentencing, disciplinary matters and Parole Board reviews. Applications were subject to the merits and means test.
974. Treatment cases covered a broad remit, such as those concerning prison conditions, discrimination, compassionate release and others. Sentencing cases concern categorisation and segregation, amongst other issues. Disciplinary matters cover Advice and Advocacy Assistance in proceedings before a Prison Governor or an Independent Adjudicator involving a breach of prison discipline. Parole Board reviews cover Advice and Advocacy Assistance before the Parole Board or representations in relation to a mandatory life sentence.
975. The decision to remove various areas of prison law from the scope of legal aid was consulted upon as part of the Legal Aid Transformation (LAT) package of reforms. The first consultation concluded in June 2013 and the changes to prison law were part of the first wave of implementation of the LAT policies that came into force in December 2013. The changes were introduced by the Criminal Legal Aid (General) (Amendment) Regulations 2013.³⁰²
976. Following the Criminal Legal Aid (General) (Amendment) Regulations 2013, legal aid was only available in the following four areas:
- i. Proceedings involving the determination of a criminal charge for the purposes of Article 6(1) of the ECHR;
 - ii. All proceedings before the Parole Board, where the Parole Board has the power to direct the individual's release;
 - iii. Advice and Assistance in relation to sentence calculation where the date of release or the date of eligibility for consideration by the Parole Board for a direction to be released, is disputed; and,
 - iv. Disciplinary cases where the governor has given permission for legal representation after successful application of the Tarrant principles.³⁰³
977. In line with the Coalition Government's attempt to boost public confidence and reduce the cost of the legal aid system, prison legal aid was targeted at those who needed it most.

³⁰² See: <http://www.legislation.gov.uk/ukxi/2013/2790/contents/made>

³⁰³ The Tarrant principles originate from *R v Secretary of State for the Home Department ex parte Tarran*. 1984. The Tarrant principles are, broadly:

- 1) Severity of the charge and potential penalty;
- 2) Any points of law arising;
- 3) Capacity of the Prisoner;
- 4) Procedural difficulties;
- 5) Speed;
- 6) Fairness.

978. Legal aid for Advice and Assistance in all treatment matters was removed, as they were deemed to be not of sufficient priority to justify the use of public funds, considering the alternative means of problem resolution that should be available to prisoners. The changes amending the scope of criminal legal aid for prison law were intended to focus public resources on cases that are of sufficient priority to justify the use of public money.
979. The Coalition Government emphasised the need to use the internal prison requests and complaints system and stated that legal aid should not be the only avenue for prisoners to pursue complaints: if a prisoner is not satisfied with the response, they may refer their complaint to the Prisons and Probation Ombudsman (PPO). In addition, at any point during the complaint process a prisoner can also make an application to speak to a member of the local Independent Monitoring Board. The Parliamentary Commissioner for Administration can also be approached if the complaint has not been satisfactorily resolved via the complaints process. The prisoner discipline procedures system and probation complaints system may also be used, where applicable.

Prison law scope expansion

980. On 31 January and 1 February 2017, the Court of Appeal heard a challenge by way of judicial review brought by the Howard League for Penal Reform and the Prisoners' Advice Service to the Criminal Legal Aid (General) Regulations 2013.³⁰⁴ The substance of the claim was that removal of legal aid in some areas of prison decision making had led to inherent unfairness in the decision-making process.
981. On 10 April 2017, the Court of Appeal gave its judgment in the case, finding that the removal of legal aid from three of the areas of prison law under consideration had led to a system that was inherently unfair, leading to an unacceptably high risk of unlawful decision making. These categories were:
- i. Pre-tariff review hearings and other advice cases before the Parole Board – these involve life or other indeterminate sentenced prisoners where the Parole Board does not have the power to direct release but advises the Secretary of State on whether the prisoner is suitable for a move or return to open conditions;
 - ii. Category A prisoner reviews; and,
 - iii. Placement in Close Supervision Centres.
982. The three categories were reintroduced into the scope of legal aid by The Criminal Legal Aid (Amendment) Regulations 2017.³⁰⁵

³⁰⁴ The Howard League for Penal Reform and Prisoners' Advice Service v the Lord Chancellor. 2017. EWCA Civ 244. See: <https://www.judiciary.uk/wp-content/uploads/2017/04/howard-league-v-lord-chancellor-20170410.pdf>

³⁰⁵ See: <http://www.legislation.gov.uk/uksi/2017/1319/made>

983. There were also two categories in which the Court of Appeal found that there was no inherent unfairness, partly due to the availability of other assistance. These categories were:
- i. Access to Offending Behaviour Programmes; and,
 - ii. Disciplinary Proceedings.
984. As part of the process of amending the regulations, the former Lord Chancellor decided to make criminal legal aid funding available for Advice and Assistance regarding a prisoner's placement in a separation centre within a prison. Given the strong parallels between the referral and review arrangements which apply to both close supervision centres and separation centres, the Lord Chancellor's decision recognised that similar safeguards should be in place.
985. The four categories of law which have been brought into scope since implementation of the LAT reforms have caused a small increase in legal aid expenditure since the outcome of the litigation. Although the full effect is still filtering through into the data, the added expenditure is predicted to cause an increase in legal aid expenditure of around £1m per annum.
986. In June 2018, further changes were introduced by The Criminal Legal Aid (General) Regulations 2018.³⁰⁶ These changes confirmed the extension of criminal legal aid funding to restricted status prisoner reviews – this reflects the close similarities in the regimes governing the detention of Category A and restricted status prisoners. This latest regulation amendment also confirmed that criminal legal aid is available for the review of a young offender's Category A or restricted status – given that the classifications can apply to those held in a young offender institution as well as to prisoners. These most recent changes are only projected to have a negligible impact on the overall projected increase in expenditure of around £1m per annum.
987. In addition, during the legal challenge brought by the Howard League for Penal Reform and Prisoners' Advice Service, the former Lord Chancellor accepted that ECF would, in principle, be available as a 'safety net' for limited areas of prison law, subject to the various tests. These categories of prison law were:
- i. Applications for places on mother and baby units (accepted in October 2015);
 - ii. Licence conditions (accepted in October 2015);
 - iii. Resettlement cases concerning a prisoner's accommodation or case following release which engage Article 8 of the ECHR (accepted in April 2016); and
 - iv. Decisions concerning segregation (accepted in December 2016).

³⁰⁶ See: <http://www.legislation.gov.uk/uksi/2018/587/made>

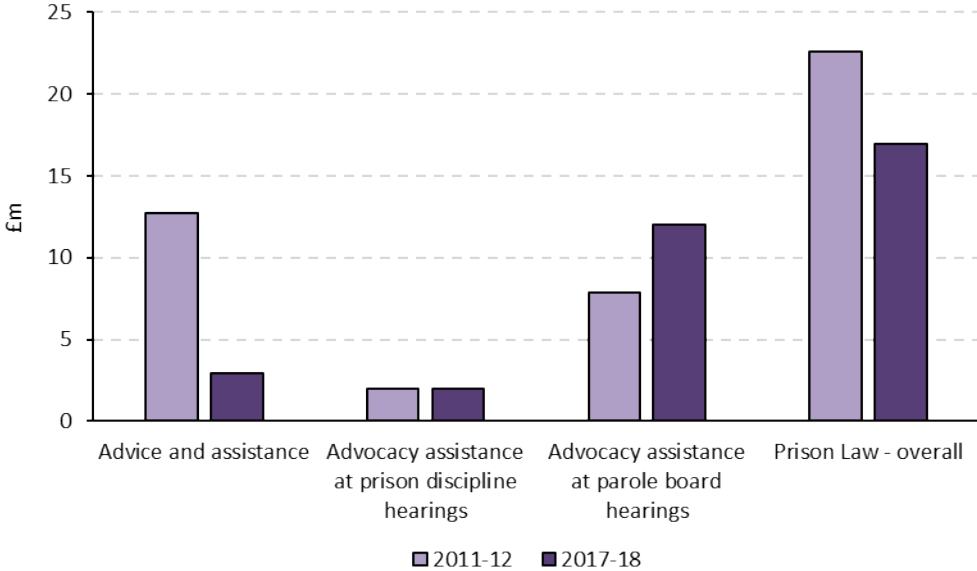
To what extent did the LASPO prison law achieve their original objectives?

Making significant savings to the cost of the scheme

988. This policy has been successful at making savings to the cost of the scheme.

989. It is important to note that prison law was, and remains, a relatively small proportion of the overall spend on criminal legal aid. In 2011-12 the LAA spent approximately £23m³⁰⁷ on prison law, which equates to 1% of total legal aid spending in England and Wales. In 2017-18 the LAA spent approximately £17m on prison law, which again equates to 1% of total legal aid spending in England and Wales. This £6m reduction is largely apportioned to the removal of scope and the subsequent drop in volumes, discussed below. Figure 28 highlights the change in legal aid expenditure and how this has changed since 2011-12.

Figure 28 – comparison of prison law expenditure between 2011-12 and 2017-18



990. Based on 2011-12 data, it was estimated that the removal of the twelve different case type categories of prison law would lead to around £4m of savings per annum for the legal aid fund.³⁰⁸ These figures were based on the categories of prison law that were completely removed from scope – other categories of prison law were substantially, but not completely removed and were not included in the savings assessment in the IA.³⁰⁹

991. For the categories that were completely removed from scope, spending has reduced by £3.4m (unrounded) since 2011-12, which is very close to the initial unrounded estimate in the IA.

³⁰⁷ The prison law expenditure figures are based on the published legal aid statistics.

³⁰⁸ The IA estimated £3.5m of savings per annum, rounded to £4m.

³⁰⁹ The IA did not assume any savings from the other categories of prison law that were substantially but not completely removed from scope as there was no further disaggregation of the data.

992. As the scope changes focused resources on cases that are of sufficient priority to justify the use of public money, the remaining categories in scope are subsequently more complex and expensive. As such, the average prison law case unit cost has increased from £530 in 2011-12 to approximately £900 in 2017-18, despite the overall reduction in spend of £6m. This includes the increase in spend of cases remaining in scope of around £2m.

993. The overall reduction in spend – including the categories completely and substantially removed from scope – does not consider the 8.75% crime lower fee reduction, which has been discussed previously. When that fee reduction is excluded, the overall reduction in spend equates to around £4m.³¹⁰

Discouraging unnecessary and adversarial litigation at public expense

994. This policy was successful in discouraging litigation in areas which the Coalition Government deemed not to be a priority, however more research is required to understand how individuals no longer accessing legal aid are now resolving their problems, if at all.

995. The scope change was largely aimed at targeting legal aid expenditure where it was most needed. The areas selected to be retained in scope were deemed most important and where alternative resolution mechanisms were least suitable. The areas removed from scope were not necessarily driven by the need to discourage unnecessary litigation, but rather where alternative means of dispute resolution are available.

996. For all categories of prison law, volumes of cases funded by legal aid dropped by 56% from 2011-12 to 2017-18 – a fall from around 43,000 cases to around 19,000.

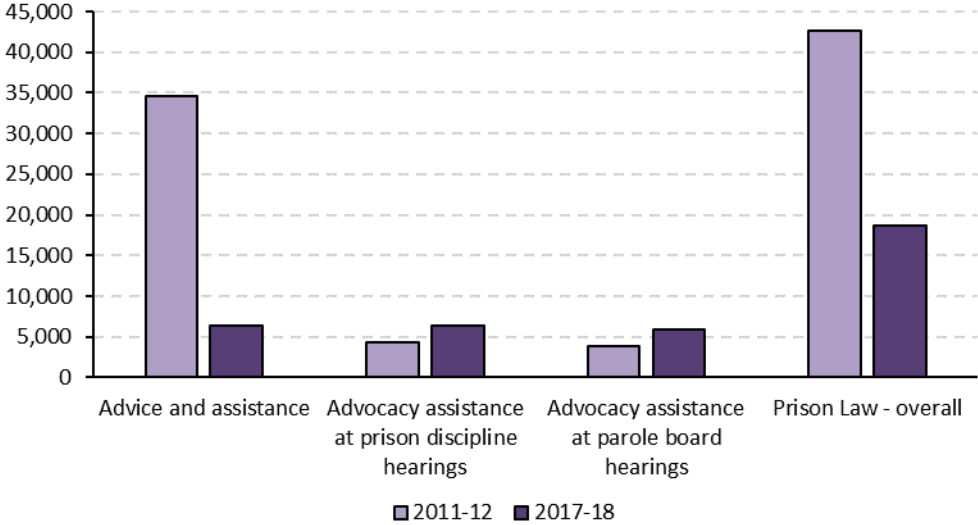
997. The fall in volumes was largely due to a drop of just over 28,000 Advice and Assistance cases, which were removed from scope for many of the categories. Advice and Assistance is work provided in connection with sentencing and discipline issues and Parole Board cases before there is an oral hearing.

998. However, as Figure 29 shows, the volume of some categories has increased. For instance, cases involving Advocacy Assistance at both Parole Board hearings and prison discipline hearings increased by just over 2,000 each. This can be partially apportioned to the Osborn, Booth and Reilly case,³¹¹ which has led to all Parole Board cases requiring oral hearings rather than being completed via papers alone.

³¹⁰ The impact of the exclusion of the 8.75% fee reduction appears more significant because the figures are rounded.

³¹¹ *Osborn v The Parole Board; Booth v The Parole Board; In the matter of an application of James Clyde Reilly for Judicial Review*. See: https://www.supremecourt.uk/decided-cases/docs/UKSC_2011_0147_Judgment.pdf

Figure 29 – comparison of volumes between 2011-12 and 2017-18



999. The original IA predicted around 11,000³¹² fewer prison law cases per annum would result from the changes to the scope of criminal legal aid.³¹³ These figures were based on the case type categories of prison law that were completely removed from scope – other categories of prison law that were substantially, but not completely removed were not considered in the IA.

1000. The overall fall in volumes exceeds the amount predicted in the IA, but this is partly due to the original IA omitting the substantially (but not completely) removed categories of prison law. Of the categories of prison law that were completely removed, volumes dropped by 10,400, based on the updated data. For categories remaining in scope volumes also fell, with around 700 fewer cases in 2017-18 than in 2011-12.

1001. Overall, the volumes of prison law cases funded by legal aid has dropped, as was the initial policy intention.

Targeting legal aid to those who need it most

1002. Overall, the albeit limited data suggests that the demographic of legal aid recipients has not been significantly altered by the scope changes. However, the lack of uptake through the ECF scheme and of alternative problem resolution mechanisms, as well as the reported lack of support for various groups (such as young people), suggest that the changes to the scope of prison legal aid have not been entirely successful at targeting legal aid at those most in need, despite the amendments to expand the scope of legal aid.

1003. To consider this objective, four factors have been considered:

³¹² The IA estimated 10,800 fewer cases, rounded to 11,000 cases.

³¹³ The data used for the IA (and the comparisons here) splits the categories of law differently to the LAA published statistics.

The accessibility of alternative dispute resolution mechanisms

1004. The Coalition Government anticipated that where categories were removed from the scope of legal aid they could be dealt with by alternative prison dispute resolution mechanisms.
1005. In response to the initial consultation, the Joint Committee on Human Rights raised concerns regarding the Government's reliance on alternative dispute resolution mechanisms.³¹⁴ In their December 2013 report, they heard evidence from organisations such as the Bingham Centre for the Rule of Law displaying their concerns regarding relying on systems that were unsuitable and/or ineffective.³¹⁵
1006. During the evidence gathering stage, the Criminal Bar Association suggested the withdrawal of legal aid has led to an escalation of problems that can lead to further problems or longer sentences for prisoners, and in turn leads to increased expenditure for the Government. At this time, we are unaware of any data collection on this area, from Her Majesty's Prisons and Probation Service (HMPPS) or otherwise. No quantifiable data was submitted regarding this topic during the evidence gathering stage.
1007. It was also reported during the evidence gathering phase that LASPO has led to an increased demand on the advice and third sectors. For instance, the Howard League for Penal Reform reported an increase of 62% of calls to their advice line since the introduction of LASPO.³¹⁶ The Prisoners' Advice Service also reported a similar rise, with call volume increasing from 14,000 to 25,000 in 2017.³¹⁷ Both organisations asserted that whilst the advice sector are trying to fill the gaps in the legal support provision left by LASPO, they lack the funding and resources to do so.
1008. There is limited, centrally held data on which to make a reliable assessment of the number of internal complaints. One source of information is the volume of complaints reported to the PPO. These have decreased since LASPO, from 5,291 in 2010-11 to 4,790 in 2017-18. It must be noted that this does not consider informal complaints or those made in confidence. Moreover, external factors – such as the prison population, prisoner behaviour and the change of demographic of prisoners – may have influenced these trends and it is impossible to isolate the impact LASPO has had. It has already been noted that the number of referrals to the advice sector (such as Prisoners' Advice Service) has increased, which could be another factor.

The demographic characteristics of those now accessing legal aid

1009. In the original equalities IA, data on the protected characteristics of 11,000 prisoners was used to predict which demographic would be most impacted by the removal of scope of various areas of prison law. This estimated that 97% of prisoners impacted by this policy were male. 53% of the sample identified as white, 25% were from an ethnic minority background and the ethnicity of 22% was unknown.

³¹⁴ See: <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/>

³¹⁵ See: <https://publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/100.pdf>

³¹⁶ See: <https://howardleague.org/news/legalaidreinstated/>

³¹⁷ See: <http://www.prisonersadvice.org.uk/about/how-we-do-it/>

1010. In the latest data,³¹⁸ it appears that the characteristics of prisoners accessing legal aid are broadly similar. In 2017-18, 97% of prisoners impacted were males, 52% of 'clients' were white, 22% were from an ethnic minority background and the ethnicity of 27% is unknown.³¹⁹ Lastly, the proportion of prisoners accessing legal aid with a disability has increased from 8% in 2011-12, to 14% in 2017-18. There is insufficient data regarding the demographic characteristics of those using alternative dispute resolution methods.

The suitability of the ECF scheme, to help those most in need yet outside of the scope of legal aid

1011. The use of the ECF scheme has had a negligible impact on legal aid expenditure for prison law, due to low uptake of cases being funded through the scheme. The ECF scheme has been discussed in more detail in chapter 1.

1012. During the evidence gathering stage interested parties and organisations reported difficulties with the ECF scheme as an inadequate safety net for those prisoners who can no longer access legal aid. Although the number of prison law cases that have been successful (or unsuccessful) cannot be isolated amongst the data set, it was asserted that the application process is excessively complex for a standard prisoner to complete. Simon Creighton, from Bhatt Murphy, said, "*prisoners cannot meaningfully apply for ECF – they have no access to internet or to the forms. It is difficult to understand why there is a different and less accessible system for these cases.*"³²⁰ It was asserted by the Association of Prison Lawyers that *given the importance of this area of law and the relatively low investment to bring prison law back into scope*, this should be an option that is considered.³²¹

The impact on certain vulnerable groups, such as young people

1013. The Coalition Government determined that adequate provision was in place to enable prisoners with mental health issues and/or learning disabilities and young offenders to use complaints systems; particularly given advocacy services are available to support young offenders. Young offenders in Young Offender Institutions and Secure Training Centres can refer complaints to the PPO if they are not satisfactorily resolved using complaints processes.

1014. During the evidence gathering phase the Howard League for Penal Reform reported that concerns remain regarding the lack of legal support available for young prisoners, during and after their prison sentence. They also raised concerns regarding the lack of legal advice and assistance available for young offenders. They provide advice via their telephone helpline and representation at certain proceedings, and estimate that they help around 1,200 young people per year.³²² This is a marked increase since 2012, despite the falling number of children and 18-20-year olds in prison.

³¹⁸ The equalities proportions are calculated as a share of total numbers which includes cases where the equalities data is unknown.

³¹⁹ Figures are rounded to nearest percent so will not necessarily equal 100%.

³²⁰ See: <http://www.apg-legalaid.org/sites/default/files/Meeting%2018.04.17%20MINUTES%20TBC.pdf>

³²¹ See: <https://www.associationofprisonlawyers.co.uk/apl-response-to-the-laspo-pir/>

³²² See: <https://howardleague.org/legal-work/>

1015. The Howard League for Penal Reform further remark that “*due to the cuts to legal aid, children and young adults cannot get legal advice and help from other legal aid providers in private practice as they are no longer paid to do the work. Children and young adults have to rely on charitable funding to fill in the gap that used to be provided by legal aid*”.³²³

Delivering better overall value for money for the taxpayer

1016. Utilising the NAO criteria outlined in the introduction (paragraphs 107-113), this scope reduction achieved economy since when considering only cases completely removed from criminal legal aid scope, it has achieved savings of about £3.4m. Overall prison law spend has reduced by around £6m (or around £4m excluding the fee reduction) and this also includes those cases that were substantially but not completely removed from scope.

1017. With regards to better targeting legal aid at those who need it most, it seems this policy has been successful although the expected rise in ECF cases from cases no longer in scope has not materialised. Despite this, the two primary aims of this scope reduction seem to have been achieved meaning that this policy was effective.

1018. With regards to equity, data on prisoners’ characteristics suggests that there have been no substantial negative effects on the make-up of those taking up legal aid, however concerns have been raised regarding young offender’s access to legal support. In terms of efficiency, more data is required about how prisoners are resolving their problems – if at all – without the availability of legal aid.

1019. As such, we have been unable to make a complete conclusion regarding the extent to which these policies represent value for money to the taxpayer.

³²³ Howard League for Penal Reform. 2018. *Evidence submission for this review*. See: https://howardleague.org/wp-content/uploads/2018/10/Howard_league_LASPO-response_29_10_2018.pdf

4.4 Eligibility Changes

Policy Summary

1020. People who are arrested and held in custody in a police station or other premises, and those facing criminal offences in the magistrates' court or Crown Court may be eligible for legal aid funding of their legal services. Eligibility requirements differ depending on the stage of the process to which the legal services apply.
1021. Initial advice and assistance is available for all those questioned in a police station. For legal aid in the magistrates' court, defendants are subject to an Interests of Justice test, an initial means test, and in certain circumstances, a full means test. If the defendant is eligible for legal aid, they are not required to make any income-based contributions.
1022. For the Crown Court, defendants are not subject to the Interests of Justice test, as Crown Court cases automatically satisfy this. However, Crown Court defendants are subject to an initial means test, and often a full means test or capital means test, depending on the findings of the initial means test. Due to the increased legal costs in the Crown Court, defendants may also be required to make financial contributions to this, depending on their level of income.
1023. Prior to LAT, the sole purpose of the means testing in the Crown Court was to determine the level of income contribution required, if any at all. This is because all Crown Court defendants would be eligible for legal aid, as there was no upper income threshold above which someone would not automatically be eligible. As discussed below, LAT introduced an upper eligibility threshold for the first time in the Crown Court.
1024. If a defendant is acquitted, and in receipt of legal aid, the defendant will recoup any contributions they have made from their income.³²⁴ However, the ability of those people not in receipt of legal aid to recoup their representation costs was changed initially by the LAR reforms, and again through the LAT reforms. This is discussed in more detail in this chapter, however is summarised briefly below.
1025. Before LAR, acquitted defendants who paid privately for legal costs were entitled to be refunded these costs out of 'central funds' – these are called 'defendant's cost orders' (DCO).³²⁵ As part of the LAR package of reforms, the Coalition Government removed this entitlement, meaning that anyone who elected to pay privately were no longer entitled to recoup their privately paid representation fees if they were acquitted.³²⁶
1026. Following the implementation of the upper eligibility threshold in LAT, there was now a cohort of people who would be financially ineligible for legal aid, and the entitlement for DCOs was therefore changed again. Post-LAT, if an acquitted defendant paid privately after applying for and being refused legal aid, they were

³²⁴ The repayment is made under paragraph 4A of s21 of the Prosecution of Offences Act

³²⁵ DCOs can also be made for other reasons, for instance if the prosecution does not proceed with matters and charges are left to lie on file. Another example is if, in the Court of Appeal, the appeal is successful to the extent that a less severe punishment is made.

³²⁶ Privately paying individuals could still be reimbursed their out of pocket expenses under a DCO.

entitled to a DCO to cover their costs, but this was capped at legal aid rates, rather than private rates. If the acquitted defendant paid privately after not applying for legal aid, they continued to be ineligible for a DCO for the legal fees.

1027. This chapter will look at the following changes to criminal legal aid eligibility:

Amending provisions for defendant's cost orders (LAR)

1028. Prior to LAR, all defendants who were acquitted in a criminal case, and who had paid privately for their defence costs, could claim reimbursement of their expenses, including legal costs, from central funds. This reimbursement is called a defendant's cost order (DCO).

1029. Hourly rates for privately paying clients are generally significantly higher than those paid to solicitors and barristers under legal aid. This meant the Government was exposed to meeting privately funded defence costs in a small number of high cost cases in which the cost could run into several millions of pounds. At the time of LAR, the Coalition Government noted that there had been overspending on the central funds budget allocation for several years.

1030. To combat this, Schedule 7 of LASPO limited the use of DCOs for Crown Court cases, so that it was only available to those who had applied for legal aid.³²⁷ The result of this change was that acquitted defendants who sought private representation and did not apply for legal aid could no longer recoup any of their legal fees. DCOs still applied for defendants in the magistrates' court, as defendants could fail the (non-contributory) financial means test. DCOs could also still be used in respect of out of pocket expenses.

1031. Furthermore, Schedule 7 of LASPO removed the ability for the Crown Court to make a DCO, because all applicants who applied for legal aid would be eligible (at the time). The Coalition Government outlined several motivating factors behind this policy change:

- i. it was not considered right for the taxpayer to bear significantly greater costs for a privately-paying defendant or appellant than for one who is legally aided;
- ii. if an individual elected to instruct their defence team on a private basis, it was not believed that the taxpayer should indemnify them simply because the individual was willing to pay more;
- iii. money spent compensating successful defendants at private rates is money that would not be available to provide publicly funded legal services to those most in need of them; and,
- iv. capping recoverable legal costs from central funds at legal aid rates was believed to help ensure greater parity between legal aid payments and

³²⁷ Schedule 7, Part 1, paragraph 3 introduces Prosecution of Offences Act 1985, Part II, Section 16A "Legal Costs" – see: <http://www.legislation.gov.uk/ukpga/2012/10/schedule/7/paragraph/3/enacted>

payments to acquitted defendants from central funds. It was believed that this is fair to the individual and fair to the taxpayer.³²⁸

Preventing companies from having their DCOs reimbursed through central funds (LAR)

1032. Criminal prosecutions against companies are rare in the Crown Court. Prior to LAR, if a company was prosecuted, and then acquitted, the company was eligible for a DCO, in order to recover their private legal costs. This system exposed the Coalition Government to potentially significant fees in one-off, expensive criminal cases against companies, potentially running into the millions of pounds.

1033. As such, prior to LAR a fair proportion of the most expensive cases paid out as DCOs related to companies. The Coalition Government introduced this policy so that DCOs were not available for acquitted defendant companies in such cases.

1034. The Coalition Government argued that as companies may be able to take out insurance against the costs of prosecution, the risk of covering these costs could be met elsewhere. It is not clear the extent to which this has happened and the impacts are not necessarily quantifiable.

The introduction of the £37,500 disposable income threshold (LAT)

1035. Section 21 of LASPO provides for means testing of an individual's financial resources to determine their eligibility for criminal legal aid. As part of the LAT programme, the Coalition Government introduced a financial eligibility threshold for legal aid in the Crown Court. This meant any defendant with a disposable household income of £37,500 or more would be ineligible for legal aid.³²⁹ Previously there had been no upper limit to the criminal legal aid means test. The Coalition Government considered that in principle, the taxpayer should no longer routinely fund legal aid costs for people who can afford to pay for their own defence.

1036. To ensure those whose income was above the threshold but could not in fact afford to pay for the cost of their case privately were still able to access funding, applicants above the threshold were permitted to apply for a hardship review. In applying for a review, the applicant would be required to supply financial information which showed that they could not afford to pay the estimated full costs of their defence privately. An application could be made where the applicant has higher than usual allowable outgoings or expenditure that has not been taken into account by the means test, such as care costs for a disabled relative, loans or fines³³⁰. If on review an applicant

³²⁸ Central Funds Reforms IA, which can be found here: <https://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information>

³²⁹ Disposable household income is the applicant's annual gross household income minus specified allowable outgoings (tax and National Insurance, council tax, housing and childcare costs, and any maintenance costs) and the weighted annual living allowance (this includes such items as food and non-alcoholic drinks, household goods, and services and transport). The computation period is the 12 months immediately prior to making an application. The proposed threshold was estimated at the time of LASPO to be approximately twice the average annual disposable household income.

³³⁰ Additional expenditure that may be taken into account includes secured or unsecured loans, medical costs, rent arrears, student loans, mortgages on a second property, pension payments and credit card payments.

was successful in satisfying the hardship test, they would be eligible for legal aid, subject to contributions.

1037. As defendants could now fail the Court Crown means test for the first time, the circumstances in which the Crown Court could include an amount in respect of legal expenses when making a DCO was amended. The circumstances in which a DCO made in the Crown Court could include an amount in respect of legal costs was extended to include individuals, who applied for, but were financially ineligible for Crown Court legal aid. This meant that acquitted defendants who were ineligible for legal aid could recover their private defence costs from central funds, albeit at the rates prescribed by the Lord Chancellor rather than the actual private rates that they paid.³³¹

1038. This policy was intended to ensure that the wealthiest Crown Court defendants, who were not subject to a restraint order and had the means to pay privately, were not automatically provided with legal aid at the taxpayer's expense. In doing so, it was intended to increase public confidence and credibility in the legal aid system, rather than making a significant reduction in public spending.

Recovery of costs from restrained assets (LAT)

1039. Under the Proceeds of Crime Act 2002 (POCA), identified financial assets can be 'restrained' by the court — meaning they cannot be spent or moved by the person who has been charged until their trial is over. If the individual is convicted, these assets can be used by the court to pay compensation to victims or to make confiscation orders. Prior to LASPO, final defence costs incurred by the defendant to the LAA could not be recouped via recovery from these restrained assets.

1040. As part of the Crime and Courts Act 2013, the Coalition Government amended POCA to permit the repayment of the final defence costs incurred by the defendant to the LAA from restrained assets. This change was implemented as part of the LAT package in May 2015.

1041. The Coalition Government introduced this policy change to allow the LAA to recover any outstanding final defence costs from restrained assets via a Capital Contribution Order and following an individual's conviction. The change made would enable the LAA to seek to keep the restraint order in place until final defence costs were paid.

³³¹ The power was inserted by the Costs in Criminal Cases (Legal Costs) (Exceptions) Regulations 2014. See: <https://www.legislation.gov.uk/ukdsi/2013/9780111106303>

To what extent did the LASPO criminal eligibility changes meet their original objectives?

Making significant savings to the cost of the scheme

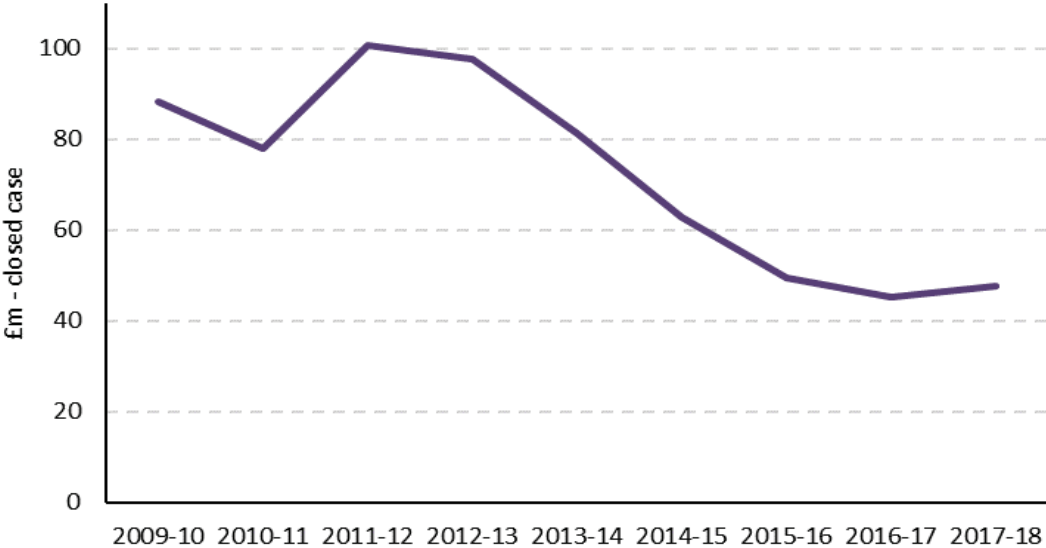
1042. Although there are limitations to the data available, the fall in the overall central funds expenditure suggests that the measures put in place to reduce expenditure have been effective. The savings generated by the other eligibility measures are considerably smaller than the central funds reforms, which are now considered in more detail below.

Amending provisions for defence costs orders - LAR

1043. The reform to DCO repayments was aimed at making significant savings to the cost of the scheme. The original IA estimated the two measures combined would save the central fund £50m per annum, in nominal cash terms. The move to no longer reimbursing companies made up £10m of the estimated savings, while capping rates at legal aid rates was estimated to save £40m per annum.

1044. Annual central funds expenditure³³² has fallen by £53m since 2011-12 – from £101m to £48m. Total expenditure on central funds can be seen in Figure 29. It must be noted that central funds include a number of other, non-Crown Court forms of expenditure, so the changes to the repayments of acquitted defendants may not be the only driver here.

Figure 29 – central funds expenditure since 2009-10



1045. Drilling deeper into central funds expenditure, we can see how the changes have impacted on DCOs. As discussed previously, DCOs were not available for reimbursement of private legal representation in the Crown Court following LAR, as all defendants were eligible (subject to varying income contributions). As such, DCOs in the Crown Court were limited to cover defendants out of pocket expenses, such as travel and hotel accommodation. As defendants could still be ineligible for

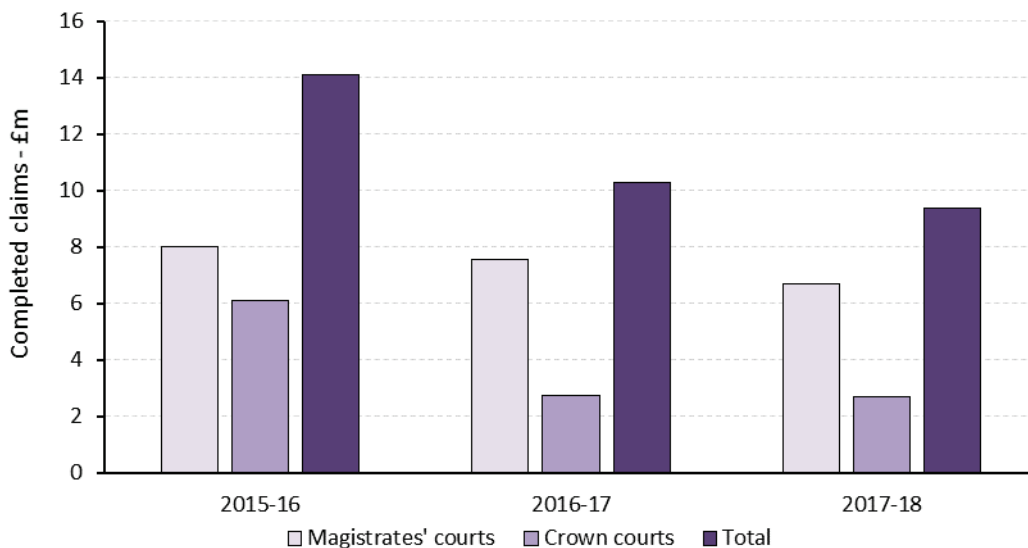
³³² Central funds expenditure figures are based on the published legal aid statistics.

legal aid in the magistrates' court, DCOs were still fully available, albeit with repayments capped at legal aid rates.

1046. Following the introduction of the £37,500 disposable income threshold (discussed below), DCOs were made available again for acquitted defendants, as defendants could now fail the financial means test. Therefore, for cases commencing between 1 October 2012 and 27 January 2014 there was a decline in the scope of DCOs in the Crown Court.

1047. As such, the expenditure on DCOs has fallen sharply in the Crown Court (by 56% since 2015-16)³³³, as Crown Court cases that commenced in the period where there was limited function of DCOs were reaching their conclusions. Expenditure on DCOs in the magistrates' court has also fallen, by 16% since 2015-16. In total, expenditure on DCOs has fallen by 33% since 2015-16. Figure 30 highlights the change in expenditure on DCOs.

Figure 30 – DCO expenditure since 2015-16

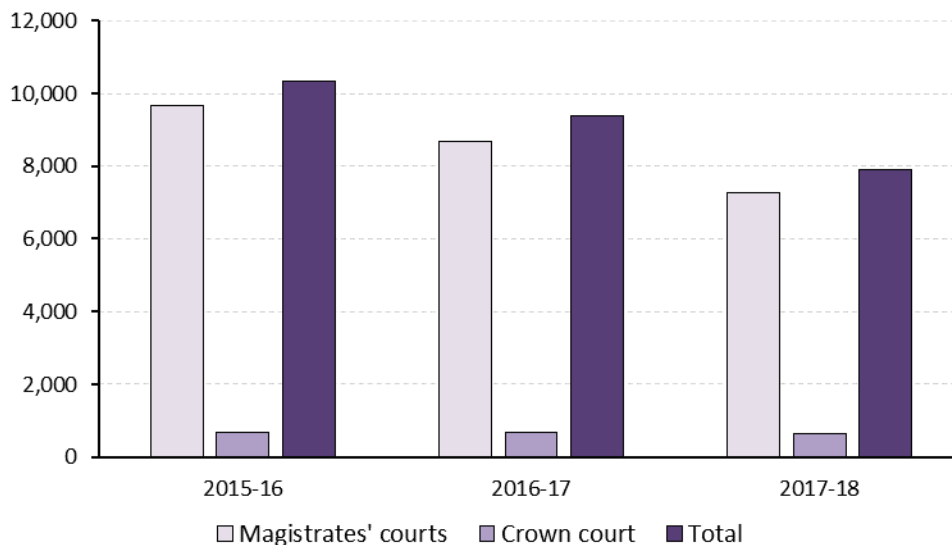


1048. Overall volumes of DCOs have fallen by 23% since 2015-16, made up of a 25% decrease in the magistrates' court and an 8% decrease in the Crown Court. As Figure 31 highlights the magistrates' court provides the vast majority of DCOs. When considering these volumes, it is important to note that each individual court case may involve multiple DCO bills.

1049. The fall in expenditure could also be due to the fall in overall Crown Court volumes. The acquittal rate in the Crown Court has remained broadly the same since 2015-16 (around 20%), so this cannot be apportioned for the change in expenditure.

³³³ A full year data split is unavailable for defendant's cost orders prior to 2015/16, whereas published central funds data more widely dates back to 2009/10.

Figure 31 – volume of DCOs since 2015-16



1050. Some costs may have been transferred from central funds to the LAA if individual clients opted for legal aid instead of instructing private providers, because of policy changes. In effect these transferred costs for the legal aid fund would translate into a saving for central funds. The same remuneration would have been received, as cases get transferred to the LAA, with no overall implication on Government savings.

1051. Due to data limitations it has not been possible to fully validate the savings presented in the original central funds IA. However, the fall in the overall central funds expenditure suggests that the measures put in place to reduce expenditure have been effective. The analysis of DCOs has been restricted to the period 2015-16 to 2017-18, and limiting the conclusions that can be drawn. However, initial trends suggest that both expenditure and volumes of DCOs are declining, as was expected.

Incorporating restrained assets into the eligibility test - LAT

1052. This policy was designed to challenge the public perception that the wealthiest defendants were able to access the legal aid system and support the objective of ensuring that the criminal legal aid system delivered better overall value for money.

1053. It is still too soon to tell if this policy has worked effectively, due to the length and nature of the cases involved. The LAA is yet to retain a restraint order in place to recover assets whilst they are still restrained. However, a qualitative benefit has been the creation of a more effective working relationship with prosecution agencies post-conviction to understand what assets may remain and be recoverable for the LAA once they are unrestrained and following compensation or confiscation.

1054. The LAA takes a risk based approach towards this policy and would only seek to keep a restraint order in place if this action was proportionate and there was deemed a real risk of a convicted individual dissipating their capital assets before final defence costs can be recovered.

Discouraging unnecessary and adversarial litigation at public expense

1055. As criminal legal aid is largely demand driven, the reforms to eligibility criteria were not intended to discourage unnecessary and adversarial litigation at public expense.

Targeting legal aid at those who need it most

1056. When taken collectively, the criminal legal aid eligibility changes were successful at targeting legal aid at those most in need, as it has directed expenditure away from those deemed able to afford private representation and companies, who have access to alternative forms of payment. Moreover, the hardship review procedure highlights that those deemed ineligible can request that their application is reconsidered.

The introduction of the £37,500 disposable income threshold – LAT

1057. This policy was intended to target legal aid at those who need it most, away from those who could be expected to fund their own representation. It has been successful at targeting legal aid at those deemed a priority, however it has raised the issue of perceived inequality for acquitted defendants who have paid privately (discussed below at paragraph 1071).

1058. The initial IA estimated that this would create around 200 ineligible defendants per annum. Data since the implementation of the policy shows that, on average, 227 defendants were ineligible for legal aid due to the £37,500 disposable income threshold per year. Of this cohort, an average of 123 were convicted or partially convicted (and hence did not recoup their legal fees from central funds). However, given that the number of defendants accessing the criminal courts is driven by external factors, this number may well fluctuate considerably year on year.

1059. The IA also estimated that this policy would generate savings of £2m per annum. This accounts for the reduction in income contributions, as well as the increased central funds expenditure on DCOs for those defendants which are acquitted. In total it can be estimated that this policy has saved the LAA £1.6m per annum. This consists of around £3m saved from not providing legal aid for the newly ineligible clients, minus the £0.4m lost in income contributions and the additional £1m spent via central funds, to remunerate those who have been acquitted.

1060. HMCTS statistics highlight that being legally represented has an impact on the number of hearings of the given case. In 2017, 39% of represented defendants had two or less hearings, while 23% of defendants whose representation was unknown or unrepresented had two or less hearings. Conversely, 15% of represented defendants had six or more hearings, compared with 24% who had no or unknown representation.

1061. However, the introduction of the disposable income threshold has not significantly impacted on the volume of Crown Court defendants representing themselves. In 2017, 95% of Crown Court defendants were represented at their first hearing (by a legal aid or privately funded advocate) – the same figure as 2010. The proportion of defendants dealt with in the Crown Court who were known to have had legal representation at any hearing has remained stable around 99% since 2010.

1062. In addition, as the new threshold only impacts 227 defendants per year on average, it has not had a significant impact on the grant rate of applications for legal aid in the

Crown Court. In 2017-18, 0.12% of applications were not granted in the Crown Court. This does not account for defendants who do not apply for legal aid because they are aware that they would fail the means test. However, as these defendants would need to apply regardless to recoup their fees from central funds, this should have had a negligible impact.

1063. The impact of the upper threshold has also been reduced by the ability for the defendant to make a hardship review if their application for legal aid is unsuccessful on eligibility grounds. Between February 2014 and March 2018, 125 out of the 181 (69%) eligibility reviews received regarding the new £37,500 threshold were successful. Where circumstances change (such as income being reduced, the defendant now being on passported benefits or a change in their partner status), a defendant can also make a new application following ineligibility. Of these type of reviews, 196 out of the 232 (84.5%) were successful.³³⁴ Lastly, if there has been an eligibility miscalculation (due to incorrect evidence, an LAA error or so on), the defendant can also request that their application is reviewed. Of this type, 219 out of the 324 (68%) reviews were successful.

1064. Capturing the characteristics of the defendants who failed the £37,500 eligibility threshold and were not acquitted – between February 2014 and March 2018 – a number of key trends can be identified.

1065. Firstly, 9% of defendants within the cohort declared to having a disability, whilst 85% did not and 6% did not declare either way. Secondly, most of the cohort were male (79%), with 11% female and 10% not declaring their gender. Finally, most of the affected cohort were white (70%), with 27% from an ethnic minority background. 3% did not declare their ethnicity, so some of these cohorts may be slightly larger.

Preventing companies from having their DCOs reimbursed through central funds – LAR

1066. This policy has been considered in more detail under the following objective, as it was designed to make significant savings to the cost of the scheme. However, it is important to note that this policy also contributed to meeting this objective. Given the availability of insurance for companies, legal aid is now being targeted towards those without alternative means of funding their legal representation.

Delivering better overall value for money for the taxpayer

1067. The policies have achieved two of the NAO criteria – economy and effectiveness. The primary aims of the central funds policies were to generate savings and to better target legal aid at those most in need. Central funds expenditure fell by £53m from 2010-11 to 2017-18 (which indicates savings, although central funds data also covers other areas and changes are likely to also be driven by volumes) and the new disposable income threshold of £37,500 in the Crown Court has been estimated to have achieved £1.6m in savings (compared to the £2m in the IA).

1068. In terms of effectiveness, the policy introducing an upper disposable income threshold succeeded in targeting legal aid at those with disposable income below

³³⁴ Some reviews are categorised as “new applications following ineligibility and eligibility review combined.” 30 out of 32 (94%) of these reviews (Feb 2014-Mar 2018) were successful.

£37,500. This ensures that those who can afford to pay their own litigation fees do so while those lacking the financial capacity to do so receive funding.

1069. The data concerning the characteristics of those who failed the £37,500 eligibility threshold suggests that the policies did not have great inequitable effects. However, some themes raised during the evidence gathering phase suggest that the policies may have caused some inefficiencies or inequalities. This has been discussed below. Due to data limitations a robust assessment of the efficiency and equity effects of this set of policies is unavailable.

1070. Overall, further consideration is required to ensure that the means test continues to perform the function of serving to determining the allocation of public resources to those most in need in a fair manner.

Perceived inequality where privately funded defendants are acquitted

1071. During the evidence gathering phase concerns have been raised regarding those people who are failing the financial eligibility test, but are being acquitted in the Crown Court and recouping their fees at legal aid rates, rather than the rate that they actually paid for their legal representation. As a result, individuals that are being acquitted are losing money, as private legal representation is often significantly more expensive than legal aid rates. This has been described by some as the ‘Innocence Tax’.
1072. Moreover, if the defendant does not apply for legal aid they cannot recoup at legal aid rates whatsoever. This rule applies even if the defendant did not apply because they were aware that they would fail the financial eligibility test.
1073. Young Legal Aid Lawyers reported “*people have bankrupted themselves defending themselves against charges of which they were innocent. This situation, also known as the ‘innocence tax’, is unconscionable.*”
1074. This has received criticism in the media any from some legal commentators. For example, in 2014 Nigel Evans MP claimed to have lost £130,000 after funding his defence of rape and sexual assault charges. Evans did not apply for legal aid in the first instance.
1075. Further consideration about the financial eligibility criteria is required to determine the most effective method of testing an individual’s suitability for publicly funded representation, as well as ensuring value for money is delivered.

Lack of flexibility of eligibility requirements

1076. While not a change introduced by LASPO, there have been concerns throughout the evidence gathering stage regarding the lack of flexibility to the eligibility requirements, with a lack of uprating in line with inflation frequently being raised. In their submission to the review, the Law Society remarked, “*the criminal legal aid system may require defendants whose income is at or below a minimum level as defined by the Minimum Income Standard to pay their full legal costs in the magistrates’ court or to make an income-based contribution to the cost of their defence in the Crown Court.*”³³⁵
1077. Moreover, due to the lack of uprating of the financial thresholds, the Criminal Law Solicitors Association suggested that unrepresented defendants are becoming increasingly common in the magistrates’ court, and present some difficulties for the justice system. For instance, it was asserted by the Legal Aid Practitioners Group that the lack of legal representation can cause delays, and creates a burden on both the prosecution and the magistrate to ensure the defendant fulfils their duties. Penelope Gibbs, in her Transforming Justice report, remarks “*there have always been defendants in the magistrates’ courts who have appeared without a lawyer, particularly in traffic cases. But our report suggests that there has been a significant increase in the number of people representing themselves who are not choosing to*

³³⁵ Law Society. 2018. Evidence submission to this review. See Annex 6: of the Law Society’s evidence submission. See: <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/ministry-of-justice-laspo-part-1-post-implementation-review-law-society-response/>

do so.”³³⁶ There are no official figures for the number of unrepresented defendants in the magistrates’ courts.

1078. In response to the concerns raised and ideas suggested, we have set out in the accompanying Action Plan³³⁷ how we intend to move forward regarding criminal legal aid fees. We plan to undertake a broader review of criminal legal aid fee schemes as the Government believes the time is right for a more holistic review of criminal legal aid fee schemes.³³⁸ We will also conduct a review into the thresholds and criteria for legal aid means entitlement. Whilst the review is ongoing we will continue with current arrangements to passport all recipients of universal credit through the means test.

1079. Furthermore, we will complete a comprehensive review of the regulatory and administrative requirements passed onto providers, and work with users to streamline these where possible. As regards to the ECF scheme (for prisoners), our actions have been discussed further in Chapter 1 of this review.

³³⁶ Transform Justice. 2016. *Justice denied? The experience of unrepresented defendants in the criminal courts*, p5. See: http://www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf

³³⁷ See: <https://www.gov.uk/government/publications/legal-support-action-plan>

³³⁸ This is in response to outstanding concerns following the AGFS Scheme 11 consultation, the Justice Select Committee’s recent reports on criminal legal aid and disclosure in criminal cases, the Attorney General’s review of disclosure, and broader changes across the justice system including the modernisation work being undertaken by the Home Office, police, CPS and HMCTS

Chapter 5 – Expert fee changes

Policy Summary

1080. The role of the expert witness is to provide technical analysis and opinion which will assist the court in reaching its decision. Experts are a disparate group, with a wide range of specialist skills and knowledge, who are used to provide information in court cases.³³⁹

1081. The LAA do not contract directly with experts³⁴⁰ – the costs incurred by solicitors for expert evidence are included in the bill they present to the LAA for disbursements which also include travel and the other ‘out of pocket’ expenses of the case. Solicitors can claim payments on account for all expert fees.

1082. Prior to LAR, most experts’ fees were paid at unpublished guideline or benchmark rates. Both the LAR and LAT programmes included reforms to the fees paid to experts in civil, family and criminal proceedings. The reforms sought to control spending and differing payments for the same work across categories. This was designed to ensure that fees were fair and consistent, and that experts were remunerated at broadly similar rates.

1083. The LAR reforms (October 2011) codified guideline hourly expert rates and fees, and reduced them by 10% (consistent with the reforms to fees payable to legal aid lawyers in civil and family cases). These rates apply to civil, family and criminal cases, and can only be exceeded in exceptional circumstances (such as when the material is of such a specialised and unusual nature that only very few experts are available to provide the necessary evidence) by seeking prior authority from the LAA.

1084. The rates are now set out in the Civil Legal Aid (Remuneration) Regulations 2013³⁴¹, as amended, and the Criminal Legal Aid (Remuneration) Regulations 2013, as amended.³⁴²

1085. The LAT reforms (December 2013) reduced the fees paid to most experts by 20%, with the following exceptions:

- i. Neurologists, Neuroradiologists and Neonatologists in clinical negligence cases;
- ii. Surveyors in housing disrepair cases;
- iii. Interpreters.

³³⁹ Some experts, such as interpreters, also provide advice outside of court. Their fees were also reduced by 10%.

³⁴⁰ Although the Ministry of Justice does in some instances, such as interpreters.

³⁴¹ See: www.legislation.gov.uk/ukxi/2013/2877/pdfs/ukxiem_20132877_en.pdf

³⁴² See: www.legislation.gov.uk/ukxi/2013/2803/pdfs/ukxiem_20132803_en.pdf

To what extent has the LASPO expert fee changes met their original objectives?

Making significant savings to the cost of the scheme

1086. The LASPO expert fee changes met the objective of making significant savings to the cost of the scheme. It is estimated that they have saved £30m per annum, which is in keeping with the combined savings estimated in the LAR and LAT IAs.

1087. When implemented, the combined LAR and LAT IA estimated that the reforms to civil and family expert fees would benefit the legal aid fund by £20m per annum in steady state (on the 2009-10 baseline). Similarly, the combined reforms to criminal expert fees were estimated to benefit the legal aid fund by a further £12m per annum. Taken together, the combined LAR and LAT IAs estimated that the reforms to expert fees would benefit the legal aid fund by £30m, as demonstrated in Figure 1.

Figure 1: Estimated benefits to the legal aid fund of expert fee changes, as in the LAR and LAT IAs³⁴³

	LAR expert fees baseline (2009-10)	LAR benefit to the legal aid fund	LAT expert fees baseline (2011-12)	LAT benefit to the legal aid fund	Total benefits
Civil and family	£65m	£6m	£70m	£14m	£20m
Criminal	£60m	£6m	£30m ³⁴⁴	£6m	£10m
Total	£120m	£10m	£100m	£20m	£30m

1088. The amount paid for experts' costs is not recorded separately by the LAA, but is estimated to be around two-thirds of the total spent per year on disbursements in criminal, civil and family cases. The LAR and LAT IA both assumed that expert costs were 65% of disbursements (other than public family law cases which the LAT IA estimated to be 90% of disbursements).

1089. As shown in Figure 2, in 2017-18, it was estimated £90m was spent on expert fees. This is a reduction of £40m since 2010-11 (before the LAR/LAT reforms were introduced).

³⁴³ All figures have been rounded to the rounding convention, therefore the totals may not sum to the individual components.

³⁴⁴ This is based only on the LGFS so is likely an underestimation.

Figure 2: Total spend on experts, based on the assumption that experts equate to two thirds of disbursements³⁴⁵

	2010- 2011	2011- 2012 ³⁴⁶	2012- 2013	2013- 2014 ³⁴⁷	2014- 2015	2015- 2016	2016- 2017	2017- 2018
Civil	£20m	£15m	£15m	£15m	£15m	£15m	£15m	£15m
Family	£60m	£70m	£70m	£70m	£50m	£30m	£30m	£40m
Crime ³⁴⁸	£50m	£50m	£50m	£40m	£40m	£40m	£40m	£40m
Total spend	£130m	£130m	£130m	£130m	£110m	£90m	£90m	£90m

1090. This reduction in total spend is driven in part by the changing case mix that has occurred in civil and family legal aid. Generally, the largest declines in expert spend have been in areas of law that had considerable disbursement and expert fee spend prior to LASPO, but have since had large scope reductions. Moreover, the use of experts also dropped in family cases due to the family law reforms in 2014 (the introduction of the Public Law Outline), although volumes have begun to increase again.

Average spend on experts per case

1091. In civil and family cases, the available data suggests that the average spend per case has fallen since the reforms, from an estimated £610 in 2010-11 to an estimated £470 2017-18. This 23% reduction suggests that the reductions to expert fees have been effective in reducing spend. It was anticipated that the average spend per case would have fallen by 28% as a result of the reforms. These calculations have been made using the estimated figure for experts’ fees in all civil representation cases in the year, and so do not reflect the spend on a ‘typical’ case involving an expert as not all cases will involve experts.

1092. In criminal cases, the only available data regarding expert spend is from the LGFS. The average spend on experts has increased from £410 per case in 2010-11, to £650 per case in 2017-18 – an increase of around 60%. This could be an indicator of increasing case complexity, which is further evidenced by increased average costs in the Crown Court in recent years. Without the reforms, spending on experts would have been higher.

1093. As the fee changes were effective in reducing spend, we have modelled what would have been spent in 2017-18 as if expert fees not been reformed by applying the pre-LAR/LAT reform fee rates to 2017-18 total spend. As illustrated in Figure 3, this suggests an estimated £30m has been saved from the reforms to expert fees, which is in keeping with the savings predicted in the LAR and LAT IAs.

³⁴⁵ All figures have been rounded to the rounding convention, therefore the totals may not sum to the individual components.

³⁴⁶ The LAR reforms were implemented during this financial year, in October 2011.

³⁴⁷ The LAT reforms were implemented during this financial year, in December 2013.

³⁴⁸ Actual expert spend in the LGFS and assumptions in paragraphs 1088 have been applied to VHCCs and crime lower respectively.

Figure 3: Estimated savings from the reforms

Category	2017-18 spend	What would have been spent without the reforms to expert fees	Benefit to the legal aid fund
Civil	£15m	£20m	£5m
Family	£40m	£50m	£15m
Criminal	£40m	£60m	£15m
Total	£90m	£130m	£30m

Discouraging unnecessary and adversarial litigation at public expense

1094. The expert fee changes did not aim to discourage unnecessary and adversarial litigation at public expense.

Targeting legal aid at those who need it most

1095. The expert fee changes did not aim to target legal aid at those who need it most.

Delivering better overall value for money for the taxpayer

1096. Since the LAR and LAT expert fee changes of 10% and 20% respectively have achieved a total £30m saving to the legal aid fund, the expert fee changes have achieved economy. The expert fee changes have also achieved effectiveness, as they have met the primary aims of reducing spend and codifying expert fee rates across categories.

1097. Due to data limitations we cannot properly assess the efficiency of these policies. As expert witnesses contract with solicitors, who are in turn reimbursed by the LAA, there is a shortage of centrally held empirical evidence regarding the availability and timeliness of expert witnesses. Therefore, a concrete conclusion regarding efficiency (and wider value for money) cannot be made.

1098. Nevertheless, a study by Liz Trinder et al. and reports by the Bar Council and Resolution suggest that the fee reductions have led to an inefficiently low level of expert advice. According to these, experts are unwilling to supply advice at current legal aid rates, potentially affecting the efficiency of cases. The evidence submitted suggests that this is a particular problem for specific areas and not necessarily throughout the spectrum of areas where expert evidence may be required.

1099. Sir Andrew McFarlane, President of the High Court Family Division said that courts needed access to high-quality expertise to determine a child's future. He said that the '*acute problem*' in finding experts may have been exacerbated by changes to legal aid fees.³⁴⁹ The Bond Solon 2017 expert witness survey indicated that 69% of their sample would not continue to provide the service if rates were reduced further.³⁵⁰ The Academy of Experts also highlighted the pressures that experts face,

³⁴⁹ See: <https://www.thetimes.co.uk/article/experts-reluctant-to-speak-in-child-abuse-cases-10cr03n2q>

³⁵⁰ Bond Solon and the Times. 2017. *Annual Expert Witness Survey Report*. p8; See: <https://www.bondsolon.com/media/169301/the-times-bond-solon-annual-expert-witness-survey-report-2017.pdf>

including the difficulties in preparing work for a case that later cracks or gets adjourned.

1100. The Association of Personal Injury lawyers reported: *'The rates allowed for expert fees remain a very real issue in legal aid cases. The hourly rate for an obstetrician to write a report in a legal aid case is £135, and for a midwife, it is £90. Unless an expert is prepared to write a report for that fee, as the solicitor already has an existing relationship with them and will provide other work to them for a reasonable rate, it is unlikely that the report will be of high quality.'*³⁵¹

1101. The Bar Council reported *'only a minority of baby brain injuries are being funded by legal aid, and this is due to the prohibitive cost of expert witnesses in such cases. Many of the high-quality experts who are needed for a claimant to litigate such cases will not accept instruction at legal aid rates.'*³⁵²

1102. Resolution's members commented that the reforms have impacted on their ability to secure expert witnesses *'as few work at legal aid rates'*³⁵³. This is said to result in more time being spent trying to find experts who take extended time to prepare reports due to demand.

1103. To ensure value for money, the existing fees payable to experts under legal aid needed to be reduced to align them more closely with those paid elsewhere. The Government must continue to ensure that every aspect of fee remuneration represents value for money. This includes the fees currently paid to experts.

1104. However, the Government recognises that in some specific areas, it is necessary to pay a particular level of rates to secure the necessary expertise. Therefore, the rates for some specific expert types vary, based on the nature of the expertise.

1105. Furthermore, solicitors can apply for higher expert fees under exceptional circumstances to address these issues – i.e. when there is a significant concern of lack of expert supply.

1106. It is not possible, given the empirical evidence available, to prove the impact that the fee changes have had on the length of hearings and if any delays have been caused. Due to data limitations generally, we are unable to give a clearer value for money assessment.

³⁵¹ Association of Personal Injury Lawyers. 2018. *Evidence submission to this review*

³⁵² The Bar Council (see reference 288).

³⁵³ Resolution. 2018. *Evidence submission to this review*

Chapter 6 – Disbanding the Legal Services Commission and the formation of the Legal Aid Agency

Policy Summary

1107. The Access to Justice Act 1999 contained a range of statutory functions, responsibilities and powers for the administration of legal aid and divided these between the Legal Services Commission (LSC) and the Lord Chancellor. The LSC was an executive non-departmental public body and therefore exercised its statutory responsibilities at arm's length from ministers.
1108. Amongst others, the LSC's functions and responsibilities included:
- i. Establishing, maintaining and developing a Community Legal Service (CLS) and Criminal Defence Service (CDS)
 - ii. Preparing a funding code which set criterion for the remuneration of individual cases and routes of appeal. These provisions vested in the LSC were accompanied by a range of order and direction-making powers vested in the Lord Chancellor.
1109. Concerns were raised regarding a lack of clarity around the policy role of ministers and the Ministry of Justice, as well as problems associated with accountability of the LSC. Ministers were accountable for the LSC's performance and effectiveness, but had limited formal ability to influence the LSC's approach.
1110. The Coalition Government subsequently announced a wider plan to review the landscape of legal aid and how it was administered, with the aim of setting out several reform proposals to make it work more efficiently. As such, Sir Ian Magee was invited to assess the delivery and governance of the legal aid system to assist with any of the subsequent proposals or changes to be implemented.
1111. As part of the Magee Review, it was highlighted that the governance arrangements between the Ministry of Justice and the LSC were insufficiently robust, and issues existed with the governance of the decision-making process. Concerns were also raised that the respective policy responsibilities of both bodies were not defined, and that the process through which the Ministry of Justice sets the policy framework or direction (from which the LSC must develop its strategy) was not clear.
1112. As such, it was decided that Government intervention was necessary to introduce legislation to abolish the LSC, provide for the transfer of LSC employees to the Ministry of Justice, and vest relevant functions and responsibilities for the administration of legal aid to the Lord Chancellor.
1113. As part of the LAR package of reforms it was announced that the LSC would be replaced by a new Executive Agency of the Ministry of Justice, the Legal Aid Agency (LAA). It was intended that the new agency would handle mostly the same data as that processed by the LSC.

1114. The relevant IA outlined the objectives for the creation of the LAA. These objectives were:

- i. Budgetary objectives, which included tightening financial control of the legal aid budget and achieving wider utilisation of shared corporate services between the Ministry of Justice and the LAA.
- ii. Objectives relating to boundaries between the Ministry of Justice and the LAA, including ensuring that case-by-case funding decisions remained at arm's length from ministers and that accountability for policy decisions would be improved.

1115. LASPO also provided for the creation of a new statutory office holder, the Director of Legal Aid Casework (DLAC). The DLAC is a civil servant designated by the Lord Chancellor. The DLAC has responsibility for making determinations on legal aid in individual cases. Case decisions and some of the functions of the DLAC are delegated to LAA caseworkers, providers and/or the courts (for some criminal legal aid matters).

1116. An annual report has been published each year since its inception, to explain how the DLAC has carried out the functions assigned under LASPO over the last financial year. The four main areas covered are:

- i. The Role of the DLAC;
- ii. Decision-making process and structure;
- iii. Accountability;
- iv. Statistics.

Other themes from the evidence gathering phase

1117. A review of the LAA, based on the LAA's key performance indicators and internal governance, can be found here: <https://www.gov.uk/government/organisations/legal-aid-agency/about/our-governance>. However, the following themes have been raised throughout the engagement phase and it is important that they are now considered in turn.

Independence of the LAA

1118. During engagement with Ministry of Justice officials, Roger Smith OBE expressed concern that the position of the DLAC is far too close to ministers in terms of decision making. The final report of the Bach Commission, published in September 2017, stated that the abolition of the LSC and the creation of the LAA, has resulted in the LAA having a closer relationship to Government than its precursor. The report goes on to say that this has led to the blurring of boundaries between Whitehall and the administration of the legal aid scheme.

1119. The LAA is accountable to Parliament, and the Chief Executive Officer can appear before Parliamentary committees to provide evidence or clarity on a certain topic. For instance, former CEO Matthew Coats appeared before the Public Accounts Committee in 2015. The LAA can also provide written assurances to Parliamentary committees, such as when current CEO Shaun McNally wrote to the Justice Select Committee in 2018 regarding improvements made to LAA decision-making.

1120. The changes made under LASPO were made to intentionally ensure independence and restrict political interference.

Effectiveness

1121. The purpose of the LAA is to work with others to achieve excellence in the delivery of legal aid. This is underpinned by the four current strategic objectives³⁵⁴:

- i. Provide simple, timely and reliable access to legal aid;
- ii. Build strong relationships across Government and the justice system;
- iii. Secure value for money for the taxpayer in all that we do; and,
- iv. Achieve our full potential through being fair, proud and supportive.

1122. The LAA published its Annual Report and Accounts for 2017-18 in June 2018. This details how the agency has performed against the four strategic objectives and Key Performance Indicators (KPIs), as well as setting out its financial performance during the year in comparison to 2016-17.

1123. In 2017-18 the LAA administered approximately £1.6bn of public funds through 2,266 legal aid providers (covering Civil and Criminal representation) with administration costs of £81.3m. Figures from 2016-17 show that the LAA administered approximately £1.6bn of public funds with administration costs of £95.0m. Whilst legal aid expenditure has remained similar, the administrative costs have decreased significantly. Running costs as a percentage of total net legal aid

³⁵⁴ Legal Aid Agency. 2018. *Our Business Plan*. See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723536/LAA_Business_Plan_2018-19.pdf

expenditure are approximately 5%, significantly lower than other similar international equivalents.

1124. Performance against KPIs is monitored monthly by the LAA Board and the LAA Executive Leadership Team. In 2017-18 all KPI targets were met except for Fund Spend. This involves the amount spent on legal aid, which is demand-led.

1125. Over 530,000 bills were paid in target time, and the net error rate remained below the National Audit Office's 1% materiality threshold.

Agency Transformation Programme

1126. In 2017 the LAA launched its Agency Transformation Programme (ATP). The aim of the ATP is to further simplify the delivery of legal aid and increase automation and efficiency, by 2020. The LAA states it will do this by:

- i. Providing a service that is easy to access and simple to administer;
- ii. Establishing a modern digital service; and,
- iii. Being a flexible, valued part of the justice system that adapts to meet future needs.

1127. Through the ATP the LAA is committed to delivering more efficient and smarter services to society, the public and legal aid providers and ensuring that the LAA remains a great place to work.

Relationship with providers

1128. The LAA has a commissioning function which designs, develops and tenders new contracts in line with the Government policy.³⁵⁵ Alongside this sits the contract management function which works closely with the provider base to manage relationships and ensure that providers operate within the contractual framework.

1129. The rates of pay and fees are set by the Ministry of Justice and set out in regulation. The role of the LAA, in conjunction with the Ministry of Justice, is to ensure there are sufficient providers to ensure access to justice and that quality standards are maintained.

1130. The IA stated that the abolition of the LSC and introduction of the LAA could offer legal aid providers clearer policy lines.

1131. During the evidence gathering process interested parties raised concerns regarding the effectiveness of the decision-making processes for the LAA. The Civil Justice Council highlighted the high level of appeals against funding decisions which are accepted – in 2017-18, 53% of appeals were successful (although this is partly due to the fact that initial applications provided less information than at the appeal stage). Moreover, guidance is provided for practitioners in the Information for Applicants (IFA) document, which contract holders are obligated to read before they submit their tender for face to face advice.

³⁵⁵ Pursuant to section 2(3) of LASPO.

1132. Organisations such as Shelter and the Law Society have also raised concerns regarding operational systems, such as Client and Cost Management System (CCMS). They argue that the time it takes to audit is disproportionate, and detracts from the ability of practitioners to provide valuable advice. The CCMS system pre-dates the creation of the LAA, as the LSC had begun to develop the system prior to LASPO coming into force, in line with the wider move for the Ministry of Justice towards digital working.
1133. The LAA holds regular meetings with a wide range of external representative bodies through the respective Crime and Civil Contract Consultative Groups, with a focus on operational and contractual issues. The LAA also works together with practitioner groups through the Process Efficiency Team (PET), an innovative forum which identifies issues with the aim of enhancing operational efficiency and the user experience. Ministry of Justice officials meet representative bodies separately to discuss policy issues.
1134. Moreover, the LAA has a function to ensure both the quality of provision, for the benefit of the end user and for the taxpayer. It also has a responsibility to prohibit fraud in the legal aid system. The LAA has a fraud action plan and counter fraud activities, which are reported monthly. This is discussed in more detail in the Cabinet Office Assurance review of the LAA.³⁵⁶
1135. In terms of timeliness, the 2017-18 DLAC annual report highlights that 100% of applications for criminal legal aid were processed in two working days, 97% of applications for civil legal aid were processed in 15 working days (except in the most complex cases) and 98% of complete, accurate bills were paid in 20 working days.³⁵⁷

The role of the LAA, in comparison with the LSC

1136. During the evidence gathering phase interested parties remarked on an aspect of the LSC that has been lost in the process of creating the LAA – the duty of the DLAC and others to consider access to justice. A representative of LawforLife remarked ‘*we [the sector] relied on the LSC evidence and the loss of that service was a huge loss to the sector.*’ A representative of the LAPG remarked that “*the role of the LAA is that of an operational deliverer. The LSC had a remit to deliver access to justice. The body providing the legal aid should have an obligation to provide A2J. People are not aware of when legal aid is available.*”
1137. It is important to note that the duty to maintain access to justice rests with the Lord Chancellor, and the duty to deliver the provision of legal aid has been delegated to the DLAC.

³⁵⁶ <https://www.gov.uk/government/organisations/legal-aid-agency/about/our-governance>

³⁵⁷ Director of Legal Aid Casework Annual Report 2017-18. 2018. See p7: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/718467/dlac-annual-report-2017-18.pdf

Conclusion

1138. Through this review we have examined the extent to which the policies introduced by Part 1 of LASPO (and the various Regulations implemented under the Act) has met its original objectives. These were:

- i. Making significant savings to the cost of the scheme;
- ii. Discouraging unnecessary and adversarial litigation at public expense;
- iii. Targeting legal aid at those who need it most; and,
- iv. Delivering better overall value for money for the taxpayer.

1139. Whilst the reforms to legal aid were very broad and varied in their nature and intent, we think that it can be concluded that collectively, as a package, the changes made to legal aid by, and under, LASPO has been partially successful at meeting these objectives.

Objective 1: Making significant savings to the cost of the scheme

1140. The first objective was the extent to which LASPO has made significant savings to the cost of the legal aid scheme. In many areas, the changes made by LASPO have been successful in achieving this. The changes have been a key driver (amongst others), in the reduction in legal aid expenditure, which has fallen by over 20% since April 2013. It is clear that significant savings have been made to the legal aid fund over the time in which the LASPO changes were implemented.

Objective 2: Discouraging unnecessary and adversarial litigation at public expense

1141. There has been mixed success in discouraging unnecessary and adversarial litigation, and it differs across areas of law. As identified previously, in many areas it is difficult to isolate the impact of the legal aid changes from other factors which affect volumes of litigation. A notable example of where this objective has succeeded is clinical negligence, where the increased use of CFAs to bring claims has reduced the financial burden on legal aid expenditure while ensuring access to justice is maintained.

1142. For instance, case volumes in the civil and (public) family courts have risen since LASPO, but it is currently impossible, based on the evidence available, to say with certainty the extent to which the availability of legal aid funding can influence decisions whether to commence adversarial litigation in civil and family matters. In addition, given the availability of legal aid varies across civil and family law, only limited reliance can be placed on high level volumes in some areas of law.

1143. Perhaps the most identifiable impact has been in private family law where volumes of adversarial litigation are beginning to rise again (alongside a fall in mediation as an alternative) despite the changes made by LASPO. Further changes were made post-LASPO to subsidise more mediation sessions through legal aid, to encourage those for whom mediation may be appropriate to do so (when cost of access may have been a determining factor).

1144. However, despite these changes, it must be concluded that the changes made by LASPO were not entirely successful at discouraging unnecessary and adversarial litigation at public expense. Many factors affect a person's decision making about what avenue to pursue when resolving disputes, but the evidence indicates that the LASPO changes in isolation were not entirely successful in achieving this objective.

1145. More broadly, it is impossible to say with certainty if the changes successfully achieved this objective, though there are areas where it is clearer it may not have. We need to develop our understanding of the behaviours, needs and expectations of people with legal problems and their decisions about whether to pursue adversarial litigation or other avenues.

Objective 3: Targeting legal aid at those who need it most

1146. The changes made by LASPO were intended to target legal aid at those who need it most. This was intended to be achieved by ensuring that legal aid funding was available in the most serious cases for the people in most need. In addition, a separate scheme for exceptional cases was established to ensure that people in most need of support (where their human rights were at risk if legal aid funding was refused) with a legal problem that was not generally in the scope of funding, could access it. Indeed, since the passage of LASPO, several changes have been made to the scope of legal aid.

1147. We have a firm grasp on those people accessing legal aid funding – who they are and what problems they are facing. Last year legal aid expenditure totalled £1.6bn, the highest level since 2015. The number of people granted ECF was at its highest level since its introduction, representing a 45% rise since last year, which again is encouraging in demonstrating that people most in need are accessing legal aid.

1148. However, there is a shortage of information about those people resolving legal problems without legal aid, and how they are now resolving their legal problems. More evidence needs to be gathered to inform the understanding of people's experiences of legal problems outside of the legal aid system, what support they need to help them, and what means of resolution they pursue.

1149. Despite this, from the evidence gathering phase it is clear that in some areas improvements could be made to ensure legal aid is accessible to people in most need, when they most need it. For instance, we considered a lot of evidence identifying procedural concerns with the application processes for some areas of legal aid which added complexity for some people in some circumstances to access legal aid when they were in most need.

1150. The LAA has and continues to take steps to promote the availability of providers of legal aid for people when they are looking for help to resolve their legal problems. However, we have noted concerns by some that low levels of legal education and capability amongst some people had the potential to lead to people not accessing legal aid when they were in most need, because they were not aware it was available to them, or how to access it.

1151. Whilst this review focused on the changes made by and under LASPO, concerns were also raised by some about other areas of legal aid which may be undermining this objective, in particular around the rules for financial eligibility.

1152. In summary, we think it is impossible to say with certainty if the LASPO changes achieved this objective. There is simply too little information available about the experiences of people outside of the legal aid system.

1153. However, since the implementation of LASPO in April 2013, the Government has spent over £8bn on legal aid, demonstrating that legal aid continues to help people in need across England and Wales. Since LASPO, the Government has made changes to ensure legal aid is available when its most needed, and there may be still changes to make over time.

Objective 4: Delivering better overall value for money for the taxpayer

1154. We have focused the assessment of this objective throughout this document on the NAO criteria as outlined in the introduction (paragraphs 107-113).

1155. On the areas where the reforms have amended how legal services are procured, the available information makes it difficult to make a conclusive assessment. For instance, in the implementation of the mandatory element of the CLA telephone gateway, this policy estimated that cases via specialist phone advice cost 50% less than the equivalent face to face service. For the purposes of the PIR, it is not possible to assess this assertion for the mandatory categories of law, as the number of cases referred to the face to face service is too low and it is likely that they are not equivalent to telephone advice cases. It is also not possible to say that the delivery method to these cases is the only main difference, as other factors may influence the cost.

1156. Similarly, the changes in private family law and mediation present difficulties in making a robust assessment. The changes were intended to encourage greater use of mediation services where appropriate, in place of traditional court proceedings. While the overall spend on private family law has significantly reduced, the uptake of mediation is low, limiting our ability to robustly assess the impact in comparative terms. The extent to which mediation services (or other alternative dispute resolution services) can deliver better value for money for the taxpayer will be considered further when considering wider changes to family justice policy and the role lawyers should play in the referral and signposting process.

1157. Stakeholders have raised a number of issues during the course of our engagement that contribute to this objective.

1158. For instance, on immigration matters, stakeholders argued that LASPO had simply shifted costs onto other areas of Government, including local authorities and the Home Office. In regard to clinical negligence matters, the November 2010 consultation did acknowledge that the change to success fees (the uplift on top of base costs which lawyers charge if they win the case) could lead to a cost increase for the NHS. LASPO included provisions to manage the cost of success fees, following on from the Jackson Review.

1159. There is limited quantitative evidence to demonstrate this alleged displacement of costs. Therefore, more evidence needs to be considered to assess the extent to which value for money in this broad sense has been achieved. Much the same is true when assessing wider policy changes under LASPO which were not intended to ensure the best value for money for which legal services were procured.

1160. Beyond the scope changes, on balance, the evidence indicates that the range of changes have achieved greater overall value for money for the taxpayer. The changes have also been effective in that the fee changes have operated as intended and fees are now paid at lower or harmonised rates to providers. The fee changes will be efficient, provided the market is still able to continue providing the service. Current evidence suggests that the market is at present operating effectively, though we are unable to determine whether there will be long term impacts on legal aid provision.
1161. It has been argued that the changes have caused long-term sustainability issues for the legal aid market. Stakeholder suggested that the aging workforce undertaking legally aided work and recruitment and retention challenges means that the profession as it currently operates is not sustainable at the rates of pay available.
1162. Whilst the data available suggests that current provision is sufficient, more research is required to consider the long-term future for how legal aid services are delivered.
1163. The Ministry of Justice recognises that determining the extent to which LASPO changes represented overall value for money for the taxpayer is important, and to do this we must obtain a better understanding of this purported cost transference to other Government departments. We will be continuing our work with colleagues across Government to improve our collation of data on this issue to inform our assessment of this objective.

Wider themes

1164. In addition to informing our assessment of the changes made by LASPO against its initial objectives, several wider themes emerged through our engagement.
1165. There were six broad themes delivered strongly by those we have engaged throughout the review process. In summary, those themes were:
- i. Scope changes undermining value for money: LASPO removed many areas of early civil and family legal advice from the scope of legal aid, restricting it to the most serious cases. It is argued this lack of early intervention in social welfare and private family law generate wider costs as relatively minor legal problems can escalate and cluster into more serious problems;
 - ii. People who need legal aid cannot access it: LASPO did not substantially reform the financial eligibility requirements but lots of evidence was submitted arguing change was necessary. It is argued that even when people are eligible, there are some operational requirements that limit access;
 - iii. ECF is not working: this was intended to be the safety net to ensure that legal aid was available when an individual's human rights were breached (or at risk of being breached), should legal aid be refused. There were lots of criticisms over how the scheme operates, practically making it difficult for people to access;
 - iv. Fees for legal aid work are inadequate: reductions in the fees for legal aid work have been made by and since LASPO. Many practitioners, especially in criminal law, have argued this is affecting recruitment and retention, potentially creating future problems in provision;
 - v. Increases in litigants in person generating costs: by removing funding for legal representation the volume of self-representing litigants has risen in some areas

(especially private family law). Many argue this generates costs (though evidence is limited on this) and perpetuates perception of two-tier justice system;

- vi. Advice deserts: people may not be able to access advice due to geographical remoteness, or a shortage of supply in their given area.

1166. Alongside this review, the Ministry of Justice has also published a Legal Support Action Plan which outlines the changes the Government intends to make and the future direction for legal aid and support. The policies within this Action Plan build on the breadth of research and expertise submitted to this review including end users, academics, practitioners, representative bodies, advice providers, charities, regional interest groups, judges and other interested parties.

1167. The Action Plan is composed of several limbs which, when taken together, will ensure that:

- i. The legal aid system will continue to be accessible and efficient into the future – helping the most vulnerable;
- ii. A complementary range of legal support will be investigated to help people resolve their problems – we will explore what works, testing pilots and evaluating through both face to face advice as well as innovative methods of delivery;
- iii. The Ministry of Justice will work proactively across Government to improve decision making and processes to reduce unnecessary litigation where appropriate;
- iv. The Government will work proactively with the market to help foster and champion a culture of innovation in the provision of legal aid and wider legal support services; and
- v. The Ministry of Justice will continue its collaborative work with the professions to ensure that we can continue to attract and retain the best legal talent in the publicly-funded professions into the future.

1168. The detail of the Action Plan builds upon the valuable contributions made to the discussion by experts from across the field to inform our consideration of these issues, through this PIR. This has been a valuable process in not only identifying the impact of the changes made by LASPO and highlighting the further knowledge that needs to be developed, but also generating a multi-disciplinary conversation about the best ways to support people with legal problems now and in the future.

Annex A – Glossary of terms

Advocate: Any legal professional who provides advocacy services, that is, representation of a client in court or tribunal. Advocacy services may be provided by a barrister or a solicitor advocate. Barristers are often referred to as ‘Counsel’.

Advocates’ Graduated Fee Scheme (AGFS): The fee scheme which governs fees paid to advocates (barristers or solicitor advocates) who represent clients in criminal proceedings in the Crown Court, other than in cases which have been classified as very high cost (Criminal) cases. Payment is determined by proxy measures of the amount of work involved in a case, including the offence type, pages of prosecution evidence, prosecution witnesses, the number of days that the advocate spends at court at trial and the seniority of the advocate.

Appeals (in the Crown Court): The Crown Court deals with appeals from magistrates’ courts against conviction and sentence in the Magistrates’ Court or Youth Court, hospital or guardianship orders, failure to comply with a supervision order and failure to make a football banning order. The Crown Court also has the power to alter a sentence or other order made by the Crown Court within 56 days of the date on which it was made.

Barrister: (see also Advocate) Barristers have traditionally had the role of handling cases for representation in court, both defence and prosecution, by providing specialist legal advice and representing their clients in court and through written legal advice. Barristers’ work varies considerably depending on the area of law in which they practise and their level of expertise. It may include advising clients on the law and the strength of their legal case, holding conferences with clients to discuss the client’s situation and problems and representing clients in court. Most barristers are self-employed, with the rest employed in industry, commerce or government. Self-employed barristers work in offices called ‘chambers’, which they may share with other barristers. On completion of their training, barristers apply for a permanent position known as ‘tenancy’ in a set of chambers.

Category and areas of law: The LAA defines areas of law (education, housing etc.) thematically and contracts for the provision of advice and representation based on the categories below (see below for Crime Higher, Crime Lower, Civil Family, Civil Mental Health, Civil Immigration and Civil Other Non-Family).

Central Funds: This area encompasses arrangements to meet costs in a variety of scenarios that are not covered by the main criminal legal aid schemes. These include:

- the reimbursement of defendants who have been acquitted after privately funding their legal representation. Such payments are normally triggered when a judge grants a Defendant’s cost order (DCO) for legal aid at Magistrates, Crown or higher courts;
- meeting the cost of interpreters and translators in court;
- the cost of lawyers required where a defendant is unrepresented but where the court decides that the defendant must not themselves be allowed to cross-examine a vulnerable witness, with cases involving domestic violence being typical. This situation is covered by the terms of section 38 of the Youth Justice and Criminal Evidence Act 1999;

- meeting the costs of court intermediaries and private prosecutions and towards meeting some of the reasonable costs of attending Magistrates' Court for witnesses, experts and defendants.

Civil: The area of law that concerns the rights and relations of private citizens – for example, disputes relating to unpaid debts or the enforcement/breach of contracts. Covers civil and family law but excludes criminal matters.

Civil and Family categories:

Private law Children Act proceedings: covers disputes about divorce, children issues (including contact and residence), the separate representation of children where the court appoints it, and child abduction.

Domestic violence: injunctions, committal orders, or other orders for protection of a person from harm or forced marriages. Unlike other private family law applications there is no upper limit to a victim's income or capital for the purposes of financial eligibility (although they may have to pay a contribution).

Financial provision: ancillary relief, this is generally about money and property after a divorce or separation.

Other family proceedings: This area covers proceedings relating to defended divorce, nullity, civil partnership rights or applications under the Human Embryology Act.

Other public law Children act proceedings: Public proceedings about the welfare of children other than those covered in the special Children Act 1989 cases. Generally, for children or parents in disputes with the state, particularly local authorities, on matters such as adoption.

Special Children Act 1989 proceedings: Public proceedings under the Children Act 1989. Can cover areas such care or supervision, a child assessment order, or an emergency protection order.

Family Mediation: enables separating or divorcing couples to reach decisions about their arrangements together, using an independent third-party mediator. There is also Help with Family Mediation – a separate level of legal advice for clients participating in mediation.

Civil – Mental Health: covers all work where the primary legal issue relates to mental health, particularly where this is covered by the Mental Health Acts of 1983 and 2007, and the Mental Capacity Act 2005. Work can involve providing assistance to sectioned clients appealing the terms of their detention before a Mental Health Tribunal. There is a statutory duty to provide advice and representation in these cases, and they are funded without reference to a client's means. Representation at the tribunal is administered as controlled legal representation.

Civil – Immigration and Asylum: covers legal help on anything to do with immigration into the UK, for example, questions relating to nationality or right to stay in this country or deportations. Also covers issues relating to asylum including representation before the Asylum and Immigration Tribunal and advice to appeal to higher courts. The LASPO Act, which came into effect on 1 April 2013, made changes to the scope of legal aid for immigration law, but some areas remained in scope. These include asylum, immigration-detention, victims of trafficking or domestic violence, and judicial review. Representation

at the Immigration and Asylum Tribunal at the First-tier-Tribunal and Upper Tribunal is administered as Controlled Legal Representation.

Civil other non-family:

Against the Police etc: claims against public authorities that have the power to imprison, detain or prosecute based on a deliberate abuse of position or power or significant breach of human rights. This category also includes personal injury claims involving abuse in care.

Clinical Negligence: help with claims for damages against all types of public and private medical practitioners, including doctors, nurses and dentists.

Community Care: help for people who are unable to look after themselves because of age, illness or disability. May include obtaining or challenging an assessment for adequate services, challenging care home closures or contesting involuntary removal from home, by a local authority if deemed incapable of looking after yourself.

Consumer and general contract: enables clients to obtain advice and bring civil law actions regarding contracts and their enforcement (except where this falls into another category).

Debt: personal debts, both priority (e.g. council tax, rent arrears) and non-priority (credit cards), rescheduling debts (e.g. negotiating payment plans with creditors), challenging the validity of debts (e.g. due to dormancy) and personal insolvency/bankruptcy/Individual Voluntary Arrangements (IVAs).

Discrimination: legal help and proceedings in cases where people have been treated differently or unfairly because of specific characteristics such as race, gender, or disability.

Education: legal help on problems to do with the education service, including failing to provide education e.g. special educational needs, exclusions, bullying and admissions.

Employment: unfair and wrongful dismissal, redundancy, employment contract, discrimination, strike action, data protection and employee confidentiality, terms and conditions and wages issues. Legal aid is available for assistance prior to an Employment Tribunal (not for representation at the Tribunal). It is available for representation at an Employment Appeal Tribunal.

Housing: help with issues arising out of where people live e.g. possession and eviction, disrepair, homelessness, allocation of housing, and other landlord and tenant issues. It also includes anti-social behaviour work (e.g. a local authority taking action against a tenant).

Miscellaneous: cases that do not fall into any other category, including compensation claims for victims of trafficking and modern slavery, representation at hearings for anti-social behaviour injunctions, and advice to third parties in proceeds of crime cases.

Personal Injury: enables clients to take action for compensation if they have suffered an injury due to someone's negligence or deliberate action. Most personal injury cases have now been excluded from the scope of legal aid. Most new cases involve applications to the Criminal Injuries Compensation Board.

Public Law: civil liberties or human rights advice including advice on data protection, freedom of information issues and how to challenge the decisions of public bodies.

Welfare Benefits: covers receipt of and entitlement to benefits. Work in this category includes: challenging benefit decisions (e.g. where a benefit has been refused), gaining benefits a client is entitled to, benefit fraud and overpayments.

Civil Representation: Representation by solicitors and advocates for civil cases which could go to court or tribunal (also see Licensed work).

Committal for sentence: Where, in the Magistrates' Court, an offender has been convicted of, or has pleaded guilty to, an either way offence, but the magistrates consider that the penalties available to them are inadequate having regard to the seriousness of the offence or combination of offences, they may commit the offender to the Crown Court for sentencing.

Contracted Providers: The LAA contracts with solicitor firms and not for profit organisations to deliver face to face advice and assistance in both crime and civil, and to deliver advice over the telephone via Community Legal Advice (CLA) contracts. This includes contracted mediators who undertake mediation on behalf of legally aided clients.

Controlled Work: Work under the civil contract that covers legal advice and assistance (Legal Help), help at court and legal representation in front of Mental Health Tribunal and the Immigration and Asylum Chamber of the Upper Tribunal.

Controlled Legal Representation: see Controlled Work

Crime Higher: Legal representation in the Crown Court and above.

Crown Court (Crime Higher): typically, a solicitor prepares case for trial and a barrister or solicitor advocate provides representation.

Very High Cost Cases (Crime Higher): extensive evidence is reviewed and a case prepared by a solicitor. Senior counsel (QC) often presents.

Court of Appeal and Supreme Court (Crime Higher): The appeal and higher courts deal with smaller volumes of caseload but are generally more complex with points of law and other unusual case work.

Crime Lower: Work carried out by legal aid providers at police stations and in magistrates' courts in relation to people accused of or charged with criminal offences. Prison law is also included within this category.

Magistrates' Court (Crime Lower): solicitor preparation for appearance or trial. Representation within the magistrates' court, often by a solicitor advocate or junior barrister.

Police Station (Crime Lower): advice on rights and options pre-charge, in the station, in person by solicitor or outside the police station relating to pre-charge; or applications to extend detention.

Prison Law (Crime Lower): advice for prisoners relating to their treatment or discipline in prison (e.g. parole hearings) and their progression through the prison system.

Crown Prosecution Service (CPS): The CPS is an independent authority set up to prosecute criminal cases investigated by the police in England and Wales. In undertaking this role, the CPS advises the police during early stages of investigations, determines appropriate charges in serious or complex cases, keeps cases under continuous review

and decides which cases should be prosecuted, prepares cases for prosecution and prosecutes cases using in-house advocates, self-employed advocates or agents to present cases in court.

Determination (specialist telephone advice service): The determination process was introduced in 2013-14 for matters referred by the operator service to advice specialists to provide assessment on scope and eligibility. These outcomes have no recorded benefit but under the current payment schedule will receive a fixed payment for the work

Disbursements: Costs incurred by the provider that relate to expenses such as the cost of a travel, paying fees. For example, the payment of court fees, or paying other parties to undertake a service using experts' opinions.

ECF application: an ECF application for civil legal services is made where a case falls outside the scope of legal aid but the client or conducting solicitor believes there is evidence to support there being a requirement to provide funding because failure to do so would be a breach of, or having regard to any risk that failure to do so would be such a breach of, their Convention rights (within the meaning of the Human Rights Act 1998), or any rights of the individual to the provision of legal services that are enforceable EU rights.

ECF determination: this is the decision taken on an application by the LAA ECF team. Decision results are to either award a legal aid, grant, refuse or reject to an application.

ECF granted: an ECF application can only be granted if the exceptional case criteria are met, and the relevant criteria set out in the Civil Legal Aid (Merits Criteria) Regulations are met, and the relevant criteria set out in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations are met

ECF new application: this is the first application in relation to a particular set of proceedings.

ECF refusal: The application was assessed by the LAA ECF team and at least one of the ECF criteria were not met, so the application was refused with details for refusal provided.

ECF rejected: The application was assessed by the LAA ECF team and the determination was to reject. Either the application was in scope for non-exceptional legal aid, there was not enough information provided in the application to make a determination, or the application was defective in some other way, such as the forms were signed too long ago. Details for the rejection are provided.

ECF review application: this relates to a request for an internal review of a determination previously made by the LAA ECF team.

Either way offence: An offence which can be tried either before the magistrates' court or the Crown Court. The appropriate venue is determined at a Mode of Trial hearing at the magistrates' court. If the magistrates determine that the matter is too serious or complex for summary trial, they can commit it to the Crown Court. If the magistrates determine that the case is suitable for summary trial, the defendant can elect for trial by jury.

Finding of Fact: (domestic violence or child abuse evidence type) When the judge, jury, or administrative tribunal considered the underlying facts of the case and concluded that the respondent did commit domestic violence giving rise to risk of harm against the applicant.

Help at Court: Enables a solicitor or advisor to speak at a court or tribunal on an informal basis e.g. to argue that an order should not be enforced immediately.

Higher Courts (Crime Higher): This covers cases at the Court of Appeal and Supreme Court. The granting of legal aid funding for such cases is administered by those courts themselves.

Housing Possession Court Duty Scheme (HPCDS): The HPCDS offer free, on the day legal advice and advocacy at Court to anyone in danger of eviction or having their property repossessed regardless of their means.

Indictable offence: A criminal offence that can only be tried in the Crown Court.

Interests of justice test: The test is applied to criminal cases as part of the process to determine whether a client receives criminal legal aid. The provision of publicly funded representation is usually deemed to be in the interests of justice when the case is so serious that if the defendant is found guilty they are likely to face imprisonment, loss of livelihood or loss of reputation, where there are substantial questions of law to be argued, or the defendant is a minor, mentally handicapped, cannot speak English, or is otherwise incapable of following proceedings.

Intermediaries: Work with the justice system to enable vulnerable victims, witnesses, suspects and defendants to give complete, coherent and accurate evidence to the courts. When a vulnerable victim or witness is required to give evidence to the criminal justice system a range of special measures may be considered by the court and the assistance by an intermediary is one such measure.

Lawyer: A legal professional such as a solicitor or barrister.

Legal Aid Reform (LAR): The first tranche of reforms considered by this review. The changes packaged together to form LAR were consulted upon in the Proposals for the Reform of Legal Aid in England and Wales (November 2010), although this consultation involved changes to the scope of legal aid, which was introduced by LASPO itself. LAR was introduced prior to LASPO by secondary legislation under the Access to Justice Act 1999. It largely involved changes to the fee provisions and eligibility criteria.

Legal Aid Transformation (LAR): The second tranche of reforms considered by this review. The changes packaged together to form LAT were consulted upon in the Transforming Legal Aid: Next Steps consultation (September 2015).

Legal Help: A form of civil legal services which includes advice and assistance about a legal problem, but does not include representation or advocacy in proceedings (also see Controlled work).

Licensed Work: Work under the civil contract that covers all legal representation (representation by solicitors and barristers for civil cases which could go to court or tribunal) except work covered by Special Case Work (such as Controlled Work or VHCC), which are managed under separate contracts.

Litigators' Graduated Fee Scheme (LGFS): The fee scheme which governs fees paid to solicitors who represent clients in criminal proceedings in the Crown Court, other than in cases which have been classified as Very High Cost (Criminal) Cases. Payment is

determined by proxy measures, the type of offence, pages of prosecution evidence, and number of days of trial.

Means test: The process by which an assessment of clients' financial eligibility for public funding is made.

Merits test: The aim of the merits test is to ensure that only cases with reasonable prospects of success receive legal aid. The test does this by seeking to replicate the decision-making process that somebody who pays privately would make when deciding whether to bring, defend or continue to pursue proceedings.

New matter starts: A matter refers to an instance of help given by a service provider to a legal aid client under Controlled Work and does not cover representation at court (although can cover Controlled Legal Representation).

Police station and pre-charge work: Anyone in England and Wales who is interviewed by the police or attends a police station can receive advice funded by legal aid either on the telephone or by a solicitor in attendance with the suspect. The LAA has limited control over the volume of police station claims. Changes to police numbers and priorities will lead to changes in the number of arrests, charges and cautions.

Referral Providers: The LAA does not currently contract directly with referral providers such as barristers and experts. Whilst contracted providers will in most cases seek prior authority from the LAA for payment of barristers and experts, it is the contracted provider who chooses when to instruct a referral provider and which barrister or expert to instruct. Referral providers are paid for each piece of work either directly by the LAA in the case of barristers, or via the contracted providers in the case of experts.

Solicitor: see Litigator.

Solicitor Advocate: A solicitor who has Higher Rights of Audience and may therefore provide advocacy services. See also Advocate.

Summary Only: A summary only offence is an offence that can be heard by a magistrate sitting alone, rather than a judge and jury. A summary offence can also be heard in the absence of the defendant. Summary offences are usually considered to be less serious offences. Examples include road traffic offences and minor assaults.

Very High Cost Cases (VHCC): For criminal legal aid, VHCCs are those cases which, if the case were to proceed to trial, it would be likely to last more than 60 days. In fact, these cases can span a number of years and, while they may involve relatively small numbers of cases or defendants, the number of related contracts with providers and the amount spent are high in comparison. For each VHCC opened there may be multiple defendants, each represented by a different provider with separate VHCC contracts. The LAA makes decisions in relation to authority to incur expenditure for expert reports and runs a High Cost Case contracting scheme seeking to limit expenditure on these complex cases.

Annex B – List of changes considered in the review

This Annex does not include the disbanding the Legal Services Commission and the formation of the Legal Aid Agency, which has been considered in Chapter 6.

Civil and Family Legal Aid

	Policy	Implementation Date
1	10% reduction in all civil and family fees	Oct-11 (Civil) and Feb-12 (Family)
2	10% reduction in expert fees	Oct-11
3	Removal of proceedings from scope of legal aid	Apr-13
4	Introduction of ECF scheme	Apr-13
5	Introduction of domestic violence / child abuse evidential requirements	Apr-13
6	Intention to increase use of mediation	Apr-13
7	Mandatory telephone gateway	Apr-13
8	Applying capital eligibility test to all legal aid applicants	Apr-13
9	Increasing income contributions for contributory clients	Apr-13
10	Capping the subject matter of dispute disregard at £100,000	Apr-13
11	20% reduction in expert fees with a few minor exceptions	Dec-13
12	Removing legal aid in cases with 'borderline' prospects of success	Jan-14
13	Only remunerating pre-permission work on Judicial Reviews where permission is granted	Apr-14
14	10% reduction in fees paid to solicitors in public family law	Apr-14
15	Harmonisation of fees for barristers and other advocates in civil cases	Apr-14
16	Removing 35% fee uplift in immigration and asylum Upper Tribunal appeals	Apr-14

Criminal Legal Aid

	Policy	Implementation Date
1	Reform fees for electable either way cases heard in Crown Court	Oct-11
2	Reform fees for indictable only cases and either way cases unsuitable for summary trial	Oct-11
3	Align fees for murder and manslaughter to fees in serious sexual cases.	Oct-11
4	Combine fees for dishonesty offences to a single group paid at a lower rate	Oct-11
5	Align magistrate's court fees in London with other major urban areas	Oct-11
6	Reduce bolt on payments to advocates	Oct-11
7	10% reduction in expert fees	Oct-11
8	Capping central fund repayments at legal aid rates	Apr-13
9	Change central fund rules for companies	Apr-13
10	Harmonise payments in VHCC cases expected to take up to 60 days at trial	Oct-11
11	Changes to the scope of legal aid in prison law	Dec-13
12	Reducing the use of multiple advocates in criminal cases	Dec-13
13	30% reduction in VHCC fees for new and existing cases	Dec-13
14	20% reduction in expert fees	Dec-13
15	New income threshold of £37,500 in the Crown Court	Jan-14
16	8.75% fee reduction to solicitor's fees	Apr-14
17	Incorporating restrained assets into the eligibility test	May-15

Annex C – Organisations/individuals engaged with as part of the PIR of Part 1 of LASPO

Access to Justice Foundation
Advice Services Alliance
Advice UK
Advocate
Age UK
Anti-Trafficking and Labour Exploitation Unit
Association of Lawyers for Children
Association of Personal Injury Lawyers
Association of Prison Lawyers
Asylum Justice
Bar Council
Barclays Eagle Lab
Bingham Centre for the Rule of Law
British Red Cross
CAFCASS
Central England Law Centre
Citizens Advice
Civil Justice Council
Chartered Institute of Legal Executives
Children's Rights Alliance for England
Community Housing Cymru
Coram Children's Legal Centre
Criminal Bar Association
Criminal Law Solicitors Association
Equality and Diversity Forum
Equality and Human Rights Commission
Family Law Bar Association
Family Mediation Council
Families Need Fathers
Families Together
Fujitsu
Hackney Community Law Centre

Housing Law Practitioners Association
Howard League for Penal Reform
Hurlows Family Law Practice
Immigration Law Practitioners Association
Iridium Technology
Joint Council for the Welfare of Immigrants
Justice
Just for Kids Law
Just Rights
Legal Geek
MENCAP
Migrant and Refugee Children's Legal Unit
MIND
Neota Logic
Nuffield Foundation
Office of the Official Solicitor
Kinetic Youth
Lasa
Law for Life
LawWorks
Law Centres Network
Legal Advice Centre (University House)
Legal Aid Practitioners Group
Legal Education Foundation
Legal Services Board
Legal Services Consumer Panel
Legal Utopia
Liberty
London Criminal Courts Solicitors Association
Personal Support Unit
Prisoners' Advice Service
Public Law Project
Race Equality First
Refugee Council UK
Residential Landlords Association (Wales)
Resolution

Rights of Women

Safelives

Shelter

Social Finance

The Academy of Experts

The Children's Society

The Community Legal Outreach Collaboration, Keele University

The Law Society

The Jeanie Project

Watkins & Gunn

Women's Aid

University of South Wales Legal Advice Clinic

Young Legal Aid Lawyers

Youth Access

Dr Marie Burton, Middlesex University London

Dr Vicky Kemp, University of Nottingham

Dr Gillian Tully, Forensic Science Regulator

Dr Lucy Welsh, University of Sussex

Dr Jo Wilding, University of Brighton

Ms Joanna Miles, University of Cambridge

Professor Anne Barlow, University of Exeter

Professor Dame Hazel Genn, University College London

Professor Rosemary Hunter FAcSS (Queen Mary University of London and University of Kent).

Professor Mavis Maclean, University of Oxford

Professor Richard Moorhead, University College London

Professor Alan Paterson OBE, University of Strathclyde

Professor Roger Smith OBE

Organisations/individuals who submitted written evidence only

Bail for Immigration Detainees

Community Law Partnership

Clinical Legal Education Organisation

DLA Piper
Ealing Law Centre
Family Justice Council
Family Rights Group
Inclusion London
Irwin Mitchell
International Bar Association
Jesuit Refugee Service
Liverpool Law Clinic
Magistrates Association
National Family Mediation
Refugee Action
Southall Black Sisters
Southwark Law Centre
The Bach Commission
The Divorce Surgery
The Low Commission
Ulster University Law Clinic
Unite the Union
United Nations Human Rights Council
University of Essex Law Clinic
West Somerset Advice Bureau

Dr Kerry-Ann Barry, University of Salford
Dr James Organ, University of Liverpool
Dr Jennifer Sigafos, University of Liverpool
Dr Tatiana Tkacukova, Birmingham City University
Dr Michelle Waite, University of Salford
Ms Jess Mant, LLB, MRes, PhD Candidate, Lecturer in Law – Cardiff University
Mr Ross McQuillan-Johnson MA LLB (Hons)
Mr Andrew W Symons MA
Mr Steve Taylor
Prof Robert Lee, University of Birmingham

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