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Q4 2023 Legal Aid Statistics October - December 2023

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Introduction

Welcome to our quarterly whistle-stop tour of the Legal Aid Agency's (LAA) statistics. Spring has finally sauntered into being and brought with it the usual smorgasbord of justice issues including the latest around the Rwanda Bill and our membership of the ECHR, Police Scotland's hate crime national guidance and court roofs caving in.

We'll be covering all that and more in our next bulletin in May.

Statistics about the legal aid scheme are produced quarterly by the Justice Statistics Analytical Services division of the Ministry of Justice and give us details about legal aid matter starts, completed cases and expenditures. The latest statistics cover the quarter from October to December 2023 and were released on 28 March 2024.

You'll see below that we have quoted the LAA's language wherever possible and our own analysis of the figures and some background to the different practice areas where appropriate in blue. For newer readers, we have attempted to set out the meaning behind terms and to explain how parts of the legal aid system work in practice. Our regular readers or those more familiar with the justice system may prefer to skip over these explanatory paragraphs but we hope that newer readers find them helpful.

Do **let us know** if you would like more information or clarification on any of these points.

You can find the complete LAA statistical bulletin **here**. Gov.uk has shifted to publishing statistical bulletins in HTML format for better readability on mobile devices. It's not the most user-friendly of reads so we've provided a summary below covering civil and crime

- New case figures
- Closed case figures
- Expenditure

We also attempt to provide some explanation and context for some of the figures below together with an idea of some of the policy work strands currently underway. It is, however, hard to see the bigger picture using quarterly snapshots and so where possible we have tried to include data from longer periods to provide context for these figures. There remains a significant absence of data in this area, however. A point highlighted by the recent National Audit Office report which stated that "MoJ and LAA do not estimate overall demand for legally aided services. LAA forecasts expenditure on legal aid for budgeting purposes, incorporating external factors such as court backlogs and policy changes. However, this cannot give MoJ a view of the extent to which people may need to, and be eligible to, access legal aid." Firms and organisations delivering advice under legal aid contracts are less likely to retain information about the numbers of individuals turned away and so there is a yawning chasm in our understanding of what the service actually looks like on the ground. It also makes it difficult to determine how the service should look if it is to meet need.

On that latter point, however, some hope may be on the horizon. This month sees the publication of research undertaken by the Legal Services Board and The Law Society into public legal need. Regular readers will remember the 2019 survey of the Legal Needs of Individuals in England and Wales undertaken by these organisations. **The research represented the largest legal needs survey ever undertaken in England and Wales with the original report based upon data collected from 28,663 people.** Its successor is somewhat smaller with 17,668 adults in England and Wales surveyed. Due to be published this month, we had a sneak peek at the findings of the report and included some of the headlines below.

40% of legal need revolved around employment, finance, welfare, and benefits, influenced by wider socio-economic factors—15% attributed to the cost of living, 12% to COVID-19, and 5% to Brexit. Despite 62% seeking assistance for legal matters, a substantial 38% remain unaided, citing reasons such as self-sufficiency, unawareness of available support, or perceived cost barriers.

Key areas of challenge identified by the survey:

- Demand is increasing and resources across the system are tight
- Users can have a variety of complex needs and support requirements not always recognising their problems have a legal element
- Problems can cluster if not addressed early this can make them more difficult to resolve and lead to greater strain on wider civil society and public services
- There is no one-size-fits-all approach. Skilled advisors who can adapt to client needs are vital
- The legal support system is highly complicated and can be confusing for users to navigate

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• There is a need for more long-term planning between funders and providers.

For more information, look out for the full LSB report due to be released later this month.

A Note on Interpreting Legal Aid Statistics

Then, look at workload and expenditure trends for each legal aid category. In criminal legal aid (the total expenditure for which is £926m) this is broken into Crime Lower and Crime Higher workload. Crime Lower focuses on Police Station advice, Magistrates Court representation, Advice and Assistance on Appeals, Prison Law, and civil work associated with crime cases. Crime Higher focuses on the Crown Courts and Higher Courts expenditure. And finally, in civil legal aid (total expenditure for which is £840.6m) it is broken down into family*, immigration, mental health, and other non-family**. Summarising workload across the entire system with one number is problematic due to the diversity of services and delivery stages. We thought it might be useful to set this out visually, so please find below a pie chart representing the relative spend in both criminal and civil legal aid.

*This includes: combined family proceedings, domestic violence, financial provision, help with mediation, other family proceedings, other public law Children Act proceedings, private law Children Act proceedings, Special Children Act proceedings.

**This includes: actions against the police, clinical negligence, community care, consumer, debt, discrimination, education, employment, housing, miscellaneous, personal injury, public law, welfare benefits.

Legal aid expenditure is measured after cases are concluded and providers are paid. The statistics also measure applications for legal aid and the number of applications granted.

Legal aid expenditure on closed cases is measured in three main ways:

- 1. **Closed-case expenditure**: This is the total payments made to legal aid providers for completed work during a period. This is what we've used in our pie charts above.
- 2. **RDEL (Resource Departmental Expenditure Limits) nominal**: This is the government's measure to control spending and report past expenditure. It's a better representation of work done than closed-case expenditure because it's not adjusted for inflation.
- 3. **RDEL real**: This adjusts RDEL for inflation, making it easier to compare spending across different years.

These measures show a significant decrease in legal aid expenditure starting around 2010-11. This drop is mostly due to changes in civil legal aid scope from the LASPO Act in 2013-14 and reduced criminal legal aid workloads and provider fees.

LAA's Statistician's Comment

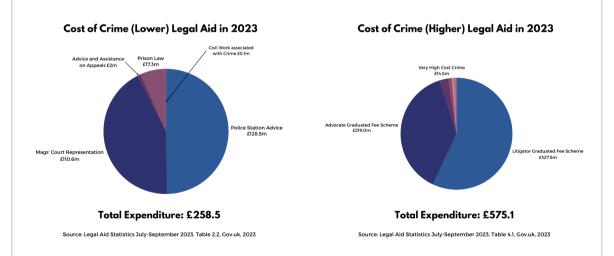
"This publication shows that expenditure across civil legal aid has increased year on year and has also increased more over the recent quarters. Criminal legal aid expenditure in the most recent quarter is compared to a period covering the impact of industrial action last year in the Crown Court, which in turn reduced workload completed and the associated expenditure, which means that some of the large increases are not indicative

In the last few quarters, we have seen increases in police station claims and a corresponding increase in representation orders at the magistrates' court. Expenditure in the police station increased in the quarter again, as expected, due to higher fees for police station advice that were introduced at the end of 2022. Crown Court workload completions are showing a return to more serious types of claim with trials increasing showing impacts of increased resourcing in the criminal courts.

Overall civil expenditure is increasing which is driven by increases in family law expenditure with the number of claims being paid outside of the fixed fee scheme increasing due to more time being taken during the court process. Other non-family workload has not recovered to the same extent, and this is driven by a slow recovery of housing work although again in the last quarter this has increased. Overall civil legal aid workload still remains below pre-pandemic levels although trends are increasing in domestic violence, immigration and mental health.

Figures are included covering the recently introduced Housing Loss Prevention Advice Service and breakdowns of these numbers are available in the underlying data accompanying this report".

Crime



Overview

"In the magistrates' court the volume of completed work increased by 7% and associated expenditure increased by 13% when compared to the same period last year".

Police Station Advice

"This category made up 70% of the Crime Lower workload between October and December 2023 but only 52% of the expenditure. The workload in this period increased

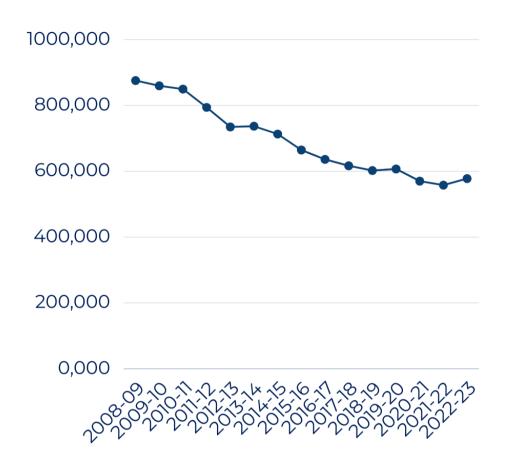
September 2022 as part of the criminal legal aid reforms. This reverses the general downward trend seen over the last few years with a decrease in police station advice workload after 2013-14.

The majority of the police station advice workload (89% in October and December 2023) consists of suspects receiving legal help with a solicitor in attendance at the police station, with the rest mainly consisting of legal advice over the telephone".

Ed: We note that while there is a slight increase in the workload in this period, the general downward trend is by no means reversed as can be seen in table 2.1 from the stats, replicated below. If you look at the volume of Police Station work, we can see that it has reduced by 616,665 (2017/18) to 484,266 (2023/24). In other words, there are 132,399 fewer cases when compared with 6 years ago.

Also worth noting is that duty solicitor rotas **published on** 3 April 2024 and relating to April to September of this year indicate that there are 42 fewer duty solicitors (now 3947) and 20 fewer firms (now 994 firms) since October 2023. These figures correspond to a **general decrease/or downward trend in the numbers of criminal duty advice solicitors** throughout England and Wales as the workforce ages and criminal defence solicitors leave the sector because the work is no longer financially viable.

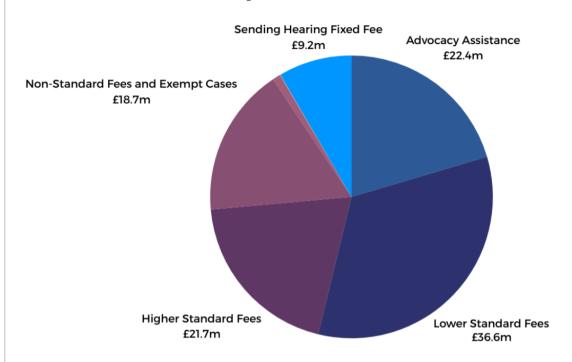
Figures from The Centre for Public Data demonstrate that nearly half (48%) of defendants appearing in the magistrates' courts on imprisonable summary offences did not have legal representation recorded on their case in the first half of 2023. This has risen from 35% during 2022.



Source: Legal Aid Statistics Oct-Dec 2023, Gov.uk, 2024

Magistrates' court

Court Representation in 2023



Total Expenditure: £110.5m

Source: Legal Aid Statistics July-September 2023, Table 2.2, Gov.uk, 2023

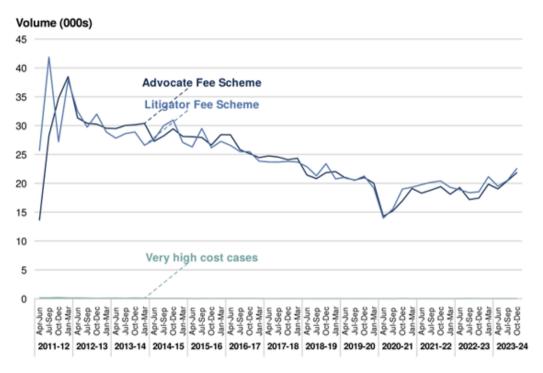
"Legally-aided representation in the magistrates' court comprised roughly one quarter, (29%) of the workload and around two fifths (41%) of expenditure in Crime Lower between October and December 2023. The volume of completed work (covered in **this report**) increased by 7% this quarter when compared to the same period of the previous year. Expenditure also increased by 13% (£3.5m).

These changes incorporate the accelerated Criminal legal aid reforms since October 2020 which cover payment for work on sending cases to the Crown Court. This new category had 11,030 completed claims costing around £2.9m this quarter".

Crown Court

"Criminal legal aid workload and expenditure in the most recent quarter is compared to a period covering the impact of industrial action last year in the Crown Court, which in turn reduced workload completed and the associated expenditure, and so many of the large increases are not indicative of underlying trends in the system. Completed work volumes within the litigator (solicitor) fee scheme increased by 22% from October to December 2023 compared to the same period of the previous year, driven mainly by a 41% increase in trial claims.

Figure 5: Workload in the Crown Court, April to June 2011 to October to December 2023



"In the litigator fee scheme, expenditure increased by 36% in October to December 2023 compared to the same period of the previous year. In the advocate fee scheme, the value of payments increased by 60% also compared to the same period of the previous year. Figures for expenditure on work completed in the Crown Court should be interpreted with caution as they may be revised in subsequent quarters as claims are assessed further on appeal and further payments added to the value of some completed claims.

The Very High-Cost Case (VHCC) scheme covers those Crown Court cases which would likely last more than 60 days if they were to proceed to trial. Such cases can span several years and, while they may involve small numbers of defendants, the associated expenditure is high in comparison.

There were 6 defendants represented in the VHCC contracts that concluded in the October to December 2023 quarter. Expenditure on this work over the duration of the contracts (i.e. on the closed-case basis) was £2.7m. This compares with £8.3m of expenditure during the same period across all ongoing claims within the VHCC scheme, suggesting that there is a large backlog of claims in the court system waiting to be finalised with cases started receiving large ongoing payments before completion of the whole claim.

While workload comprises a tiny proportion of legal aid in the Crown Court overall, the VHCC scheme represents around 2% of the cost, although down from 13% in April to May 2013".

Ed: Here, Stephen took a look at the total number of grants for all offence types. The figures in this respect are: 94,355 (2017/18) to 69,646 (Q1, Q2 and Q3 of 2023/24

		Either w offence		•		Committal for sentence		Appeals ²		Totals ³	
Financial Year	Quarter	Volume of applications	Volume granted	Volume of applications	Volume granted	Volume of applications	Volume granted	Volume of applications	Volume granted	Volume of applications	Volume granted
2017-18		46,424	46,253	28,695	28,632	16,739	16,161	3,418	3,309	95,276	94,355
2018-19 (r)	41,283	41,128	24,451	24,400	17,387	16,831	2,835	2,751	85,956	85,110
2023-24	Apr-Jun (r)	11,266	11,197	6,843	6,811	4,813	4,665	393	386	23,315	23,059
	Jul-Sep (r)	11,900	11,820	6,708	6,667	5,168	4,987	399	391	24,175	23,865
	Oct-Dec (p)	11,534	11,463	6,514	6,482	4,544	4,399	385	378	22,977	22,722

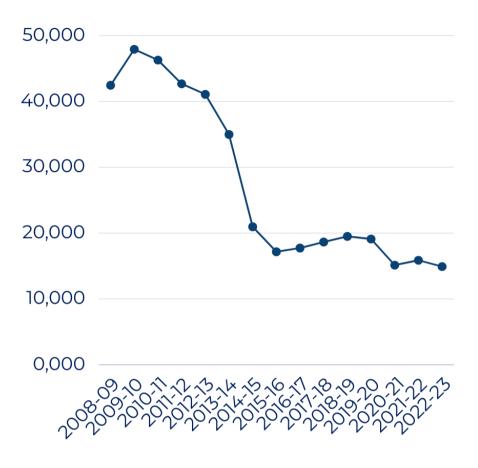
Prison Law

"Workload this quarter increased by 15% compared with the same period in the previous year. This is driven mainly by free-standing advice and assistance which increased by 16% when compared to October to December 2022.

Conversely, advocacy assistance at parole board hearings increased by 4% compared to last year, although they have decreased by 4% since last quarter. Advocacy at parole board hearings currently makes up around two-fifths (41%) of prison law workload, but a much larger proportion of costs (78%), so expenditure on prison law overall increased by 15% over this period, with a 14% increase in free-standing advice and assistance reducing the overall increase.

Since April to June 2020, the workload and expenditure for advocacy assistance at prison discipline hearings has remained low with a change in process for internal prison hearings continuing since the pandemic. Year-to-year comparisons show that workload increased by 107% and expenditure increased by 160% this quarter compared to last year showing that work is recovering in this area.

Prison law work still comprises a small portion of the volume (1%) and expenditure (2%) of total criminal legal aid work in October to December 2023".



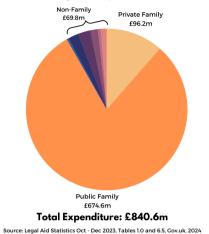
Source: Legal Aid Statistics Oct-Dec 2023, Gov.uk, 2024

Ed: We asked Dr Laura Janes, prison law specialist and member of LAPG's Advisory Committee, for her thoughts on these trends. She told us **in the same period the prison population has increased significantly and is expected to rise further**. The volume of work being referred to the Parole Board has increased exponentially. **According to the last annual report of the Board, the number of oral hearings** (which is only a part of its work), has increased from 4,216 in 2011/12 to 8,085 in 2022/23. The number of providers has reduced by around 80 per cent in the last decade. **Three-quarters of prison lawyers surveyed by the Association of Prison Lawyers do not think they will be doing legal aid prison law work in three years' time**.

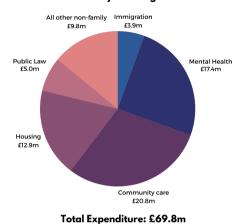
Set against this background, the modest increase in the volume of work is alarming. The data we really need to see is the number of people in prison who are entitled to legal aid but not getting it, but to our knowledge, this information isn't being gathered.

Readers will also recall that prison law was one of the practice areas which did not receive an uplift in fees under the Criminal Legal Aid Review. Fees in this area were last set in 1996 and cut in 2014. A report, published by **Frontier Economics and The Law Society** in connection with the review on civil legal aid has stated that general costs in the economy have increased by 90% over that same period of time.

Cost of Civil Legal Aid by area of law in 2023



Cost of non-family Civil Legal Aid in 2023



Source: Legal Aid Statistics July-September 2023, Table 6.5, Gov.uk, 2023

Overview

"Civil legal aid can be categorised by area of law into family and non-family. The category of family legal aid covers all work on both private and public family law and includes work associated with the Children Act, domestic abuse, financial provision and family mediation. Non-family legal aid encompasses all work related to immigration, mental health, housing and other non-family law.

Although the workload for family and non-family cases is similar, comprising 32,198 and 37,494 cases in October to December 2023 respectively, non-family cases make up only around a fifth of total civil legal aid expenditure (19%). Public family legal aid makes up just under two thirds (57%) of family legal aid work and around three quarters (77%) of expenditure".

Legal Help

"In the last quarter, there was an 11% increase in legal help new matter starts compared to the same period of 2022. The volume of completed claims increased by 19% and expenditure increased by 11% in October to December 2023 compared to the same period in 2022.

The implementation of the LASPO Act in April 2013 resulted in large reductions in legal help workload, with the decline in the overall trend being further exacerbated by the effects of COVID-19, workload now sits at less than one-quarter of pre-LASPO levels".

Family Legal Help

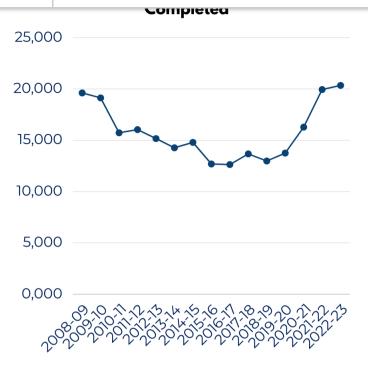
From 1 September 2021, callers to the Civil Legal Advice (CLA) helpline with family issues are no longer referred to specialist telephone advice. In October to December 2023 family legal help starts increased by 3% compared to the same quarter last year. Completed claims increased by 5% and expenditure also decreased by 1%".

Family Civil Representation

"Certificates granted for family work was unchanged in October to December 2023 compared to the previous year. Certificates completed increased by 13% and associated expenditure has increased by 5% compared to the same quarter the previous year.

While civil representation for public family law remains available, the LASPO Act removed legal aid for most private family law including issues such as contact or divorce. However, legal aid remains available for such cases where there is a risk of domestic violence or child abuse. The volume and expenditure for closed case domestic violence civil representation increased following COVID-19. More recently, in October to December 2023, certificates completed for domestic violence increased by 9% compared to the same period of the previous year.

In October to December 2023, applications for civil representation supported by evidence of domestic violence or child abuse increased by 2% compared to the same period of the previous year. The number of certificates granted via the domestic violence and child abuse gateway increased by 1% over the same period. The proportion of applications granted remained steady at around 70% from the inception of this type of application until the end of 2015, before increasing to around 80%. The provisional figure for the latest quarter is 83%".



Source: Legal Aid Statistics Oct-Dec 2023, Gov.uk, 2024

Ed: we were curious as to how these numbers measured up against the total numbers of divorces and claims in this area. A quick search of the Office of National Statistics figures shows us the following:

- ONS Figures on divorce rates in 2022 (latest available): 80,057
- ONS Figures on divorce rates in 2021: 113,505
- ONS figures on Domestic Abuse for March 2023 (latest available):
 - Estimated survivors; 2,124,000
 - Recorded: 889,918
- ONS figures on Child Abuse for March 2020 (latest available):
- As of 31 March 2019, 52,260 children in England were the subject of a child protection plan (CPP)
- **Public law cases in family law** (from the quarterly stats):
- There were 4,243 public law cases starting in July to September 2023, up 5% compared to the equivalent quarter in 2022

Ed: As readers will be aware the government committed to pilot early legal advice for private family law cases involving childcare arrangements as part of its **response to the Mandatory Mediation consultation**. The MoJ regularly consults with its stakeholder advisory group (SAG) which consists of various representative bodies and sector experts to support the design and implementation of the project. We understand that the department is looking to make 90 minutes of advice available to separating couples on a non-means and non-merits tested basis. It is currently unknown what will happen to those couples who receive advice under the pilot but are not eligible for legal aid after the 90 minutes, or unable to pay for private legal advice. The pilot is scheduled to run for two years and the MoJ tells us that they are hopeful that fieldwork can commence in

Family Mediation

"Family mediation involves an independent and impartial professionally accredited mediator discussing problems with a divorcing or separating couple. A Mediation Information and Assessment Meeting (MIAMs) is an initial meeting between one or both parties and a mediator to see if family mediation could be used to reach agreement without using the courts. MIAMs, family mediation starts, and outcomes decreased significantly following the COVID-19 restrictions in March 2020. Since then, volumes and expenditures rapidly increased to levels temporarily exceeding pre-COVID figures. The volume of MIAMs increased by 8% in the last quarter compared to the previous year and currently stand at just over a third of pre-LASPO levels. Family mediation starts decreased by 1% and total outcomes increased by 11%, of which 58% were successful agreements, and are now sitting at around half of pre-LASPO levels".

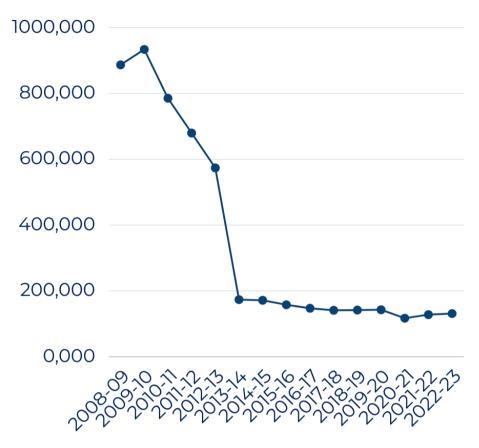
		Volume					
Financial	uarter	Mediation	Successful	No	Total		
Year	uaitei	starts_	Agreements ₁	Agreement	Outcomes		
2006-07		13,918	8,996	4,616	13,612		
2007-08		13,239	9,164	4,304	13,468		
2008-09		13,537	8,989	4,375	13,364		
2009-10		14,745	9,939	4,296	14,235		
2010-11		14,186	9,919	4,100	14,019		
2011-12		15,357	9,796	4,826	14,622		
2012-13		13,609	9,060	4,923	13,983		
2013-14		8,438	6,588	3,044	9,632		

Non-Family Legal Help

"Controlled legal representation relates to representation at tribunal, but unlike civil representation, the decision on whether to grant legal aid is delegated to providers.

Legal help and controlled legal representation make up 98% of immigration and 94% of mental health legal aid cases".





Source: Legal Aid Statistics Oct-Dec 2023, Gov.uk, 2024

Immigration:

"The LASPO Act 2012 made changes to the scope of legal aid for immigration law, but some areas remained in scope. Workload that remains in the immigration category consists largely of asylum-related work. Having fallen by over 45% in April to June 2020, new matter starts in immigration increased by 25% in October to December 2023 compared to the same quarter of the previous year. Completed claims in immigration increased by 37% in the last quarter compared to the previous year and expenditure increased by 28%".

Mental Health:

"Within mental health, most funding is spent on providing assistance to sectioned clients appealing the terms of their detention before a mental health tribunal. Mental health new matter starts increased by 2% when comparing the latest quarter to the previous year. Completed claims also was unchanged and expenditure decreased by 4% over the same period".

Housing:

"More than three quarters (83%) of legal aid housing work volume is made up of legal help. The volume of legally-aided housing work halved between July to September 2012

June 2020. In more recent months, October to December 2023, there was a 6% increase in housing work starts compared to the same quarter the previous year. There were also a 19% increase in completed claims with an 8% increase in expenditure.

There were 7,105 in court claims completed in this quarter under the HLPAS with the expenditure being £0.72m. This compares, as expected, with 7,322 from the previous quarter when combining HLPAS and the remaining HPCDS work with a cost of £0.77m. The new HLPAS early advice service had 497 claims with expenditure of £95k".

Ed: A brief recap for you. Readers may recall that last year the government **announced that they had increased investment** specifically for housing legal aid by **up to £10 million** per annum with the Housing Loss Prevention Advice Service (HLPAS). HLPAS providers are paid for early legal advice work (ELA) and remunerated separately for providing duty representation in the county court. We understand that about £1m of this amount has been set aside for a training pilot associated with this scheme.

However, the £10 million figure is an interesting one as the reality is this is likely to be far lower as the service is demand driven. If we look at paragraph 38 of the **original impact statement**, it tells us that the MoJ calculated the £10m figure on the basis of the volume of people using the service at that time:

38. In 2019 there were 37,700 claims under the HPCDS. This figure has been used as the expected volumes of future cases that will receive advice through the HLPAS. This assumes that the total volume of HLPAS clients will be the same as the number of HPCDS clients in 2019, and that these clients will all continue to use the in-court service as well.

The reality is that the numbers of clients seen under the scheme are much lower now (with just 79 cases in the first quarter and 497 in quarter two). So if we extrapolate out more current figures, the number of people using the service is very likely to fall well below the 37,700 originally projected. It's also worth noting that cases are being resolved at an earlier stage so incurring less by way of fees.

We spoke to Simon Mullings, housing team leader at Hammersmith and Fulham Law Centre and Co-chair of the Housing Law Practitioners' Association, about what practitioners have seen on the ground in relation to HLPAS. He told us that the scheme has been "blighted by aspects of its first year implementation for the following reasons:

- The LAA decided to contract for a term of just one year and so organisations that hold a duty contract now might not have that contract from August 2024. They are therefore not likely to commit long-term resources into the scheme for the time being, especially in relation to Early Legal Advice (ELA).
- Aspects of the ELA scheme are poorly documented in the contract and guidance and so there is considerable uncertainty about exactly how it is meant to work in practice.
- Design flaws in the procurement process for the second-tier advice piece of HLPAS led to only one tender which in turn was from an organisation with no known experience

• Publicity for the scheme has been limited despite this being identified as a key element of the scheme.

• The housing law sector as a whole is depleted and the county court network has been neglected which makes it a problematic space to launch HLPAS."

Simon concluded by reiterating the importance of both aspects of the scheme in the context of early advice provision but added the need for these schemes to be part of a properly funded full-range legal aid service that deals with cases from the very early stages of legal problems all the way through the courts system where necessary.

Non-Family Civil representation applications

"The number of civil representation certificates granted in the last quarter increased by 1% compared to the same period of the previous year. The number of certificates completed increased by 13%, and the associated expenditure increased by 6% over the same period.

This is due to the number of claims being paid outside of the fixed fee scheme increasing due to more time being taken during the court process. At a cost of around £230.7m in October to December 2023, total civil representation expenditure where met by the LAA is the highest it has been since 2011-12".

Judicial Reviews

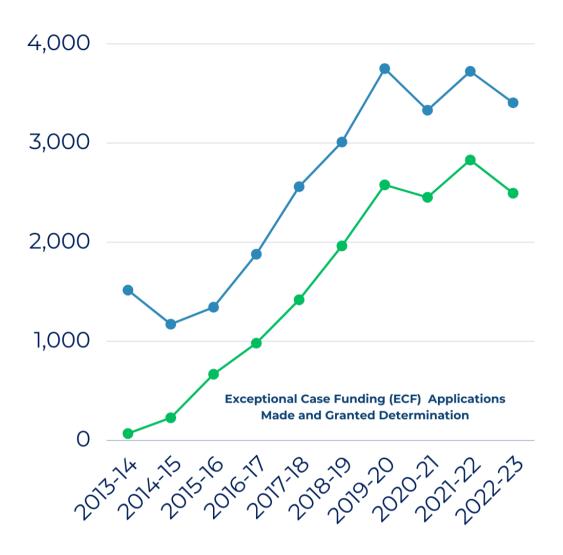
"Of all civil representation applications granted, 789 in the last quarter related to a **judicial review**. The number granted in October to December 2023 increased by 15% compared with the same quarter in 2022. Around a half of judicial reviews were for public law".

Exceptional Case Funding (ECF)

"The Exceptional Case Funding (ECF) scheme was introduced as part of LASPO. An ECF application for civil legal services is made where a case falls outside the scope of civil legal aid but the client or conducting solicitor believes failure to provide funding would be a breach of the Human Rights Act 1998.

There were 842 applications for ECF received from October to December 2023. This is a 3% decrease from the same quarter last year. 786 (93%) of these were new applications.

Of the 842 ECF applications received between October and December 2023, 98% (828)



Ed: Readers will be aware that the MoJ published a Call for Evidence associated with the Review of Civil Legal Aid (RoCLA) in January this year. This closed a month later. Over the past few weeks we have been looking at the submissions from the various representative bodies and the overlap between them. A number related to the ECF scheme, specifically the need to fully overhaul it, to simplify the application process so that providers are not working at risk, and to introduce a mechanism to bring cases back into scope if they are routinely funded as those case would no longer be deemed 'exceptional'.

And that's all for this bulletin folks. Thank you for reading us if you made it this far and let us know if there are any statistics or areas of research that you'd like us to take a look at.

Until next time.



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For more information contact:

rohini.jana@lapg.co.uk

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