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In this Issue

[Executive Summary
Statistical Bulletin
A note on
interpreting Legal Aid
Statistics
LAA's Statistician's
Comment](#)

Crime

- [Overview](#)
- [Police Station Advice](#)
- [Magistrates' court](#)
- [Crown Court](#)
- [Prison Law](#)

Civil

- [Overview](#)
- [Legal Help](#)
- [Family Legal Help](#)
- [Family Civil Representation](#)
- [Family Mediation](#)
- [Non-Family Legal Help](#)
- [Non-Family Civil representation applications](#)
- [Judicial Reviews](#)
- [Exceptional Case Funding \(ECF\)](#)

Get in touch

 [Twitter](#)

 [Website](#)

 [Email](#)

 [LinkedIn](#)

Q3 2023 Legal Aid Statistics July - September 2023

[Click here for the full set of tables and user guide](#)



Executive Summary

Happy New Year and welcome to the first statistics bulletin of 2024. It's been a bitterly cold start to the year with both snow and speculation swirling as to the likely date for a general election. It goes without saying that those of us in the justice sector would like to see commitments from all of the political parties to making the investment needed (which is comparatively modest in terms of overall public spending) to ensure that the justice system is fit for purpose. Not just in prisons and those areas that hit the headlines but as a living, breathing guarantee of our rights and freedoms and demarcation of individual roles and responsibilities within society. The electorate may not think in terms of civil or criminal legal aid, but issues such as housing, education, immigration and community care are crucial to their everyday lives. Which is why the numbers below matter.

If it's a more general update you're looking for, we'll be delivering our first news-focused bulletin of 2024 later this month. If there's anything that you'd like us to consider for that, as ever, **do get in touch**. In the meantime, some stories to be aware of over the coming year that don't start with G and E include:

CLAIR Judicial Review: After hearing oral submissions in the High Court just before Christmas, Lord Justice Singh and Mr Justice Jay will deliver their verdict in the Law Society's legal challenge to the government's decision not to uplift solicitors' fees by the minimum 15% recommended in 2021 by Lord Bellamy's independent criminal legal aid review. The Law Society (and other interested parties) have argued that by ignoring

In its **final response** to the review, published a year later, the Ministry of Justice said fees to solicitor firms would rise by around 11%.

Civil legal aid: the government-commissioned review of how best to improve the long-term sustainability of the civil legal aid sector issued a call for evidence yesterday. The ministry has said that these responses will further inform the year-long review, which is looking at 11 contracted categories of social welfare law. These are:

- family,
- community care,
- housing and debt,
- immigration and asylum,
- mental health,
- discrimination,
- education,
- public law,
- claims against public authorities,
- clinical negligence,
- and welfare benefits.

Questions include existing barriers to accessing legal aid, the issue of supporting individuals facing multiple issues, if the current fee structures support the effective resolution of problems at the earliest opportunity, barriers to accessing legal aid, areas where technology could be particularly helpful or would be particularly challenging, and measures that can be taken to encourage early resolution.

Described by Lord Chancellor, Alex Chalk as being expected “to do for civil what CLAR did for crime” we expect the publication of the review to occur at the end of March, with a consultation to follow. Final policy decisions are likely to emerge late-summer or early in the autumn depending presumably on the timing of the election. Regular readers of this bulletin will be aware of many of the concerns around these practice areas and we’ll be discussing these in further detail below together with this quarter’s statistics.

And finally, turning to the news on everyone’s lips this week, the government plans new legislation to overturn wrongful convictions of postmasters in the Horizon scandal, aiming to address the prolonged suffering of innocent individuals. Concerns exist about compensating potentially guilty parties, and the move faces criticism for deviating from the usual justice process; Kevin Hollinrake MP acknowledges the risk of a different injustice and a dilemma between unjust convictions and potentially exonerating the genuinely guilty. Some dismissed cases raised fears of unjust acquittals due to compelling theft evidence, yet despite these concerns, the government deems the action necessary, especially in an election year and heightened public awareness.

Turning now to the quarterly statistics, as usual we have quoted the LAA’s language itself and we have indicated our own analysis of the figures and some background to the different practice areas where appropriate [in blue](#). We also attempt to set out the

over these explanatory paragraphs but we've had an influx of new readers to start the year and hope that they find them helpful.

The latest statistics cover the quarter from July to September of 2023, and were released on 21 December 2023.

Statistical Bulletin

The LAA bulletin can be accessed [in full here](#). Gov.uk now releases statistical bulletins in HTML format for ease of reading on mobile devices. It's not the most user-friendly of reads so please find below our overview in both civil and crime of, *inter alia*:

- numbers of new cases
- numbers of closed cases
- expenditure

As ever, do [get in touch](#) if you would like any further information or any of these points clarified.

A note on interpreting Legal Aid statistics

For those looking for trends across legal aid as a whole, we recommend beginning by looking at annual expenditure figures and then look at trends in both workload and expenditure for each category of legal aid. Summarising workload activity across the whole legal aid system meaningfully within a single number is difficult because of the diversity of services included and different stages of delivery. For example, the amount of legal aid work could be measured at the point when legal aid is granted, or after all the legal aid work is completed and the provider has been paid. There is also a large amount of work that goes into applications for legal aid which, if not granted, is difficult to quantify. Expenditure on legal aid is measured differently for different purposes. The three most often-used measures, are:

- **Closed-case expenditure:** the measure used for expenditure figures throughout official statistics. It represents the total value of payments made to legal aid providers in relation to pieces of work that are completed in the period.
- **RDEL (Resource Departmental Expenditure Limits) nominal:** the budgeting measure used by government to control current spending, set budgets, and report on past expenditure. It represents the value of work carried out in the period better than the closed-case measure. 'Nominal' means not adjusted for inflation.
- **RDEL real:** RDEL measure adjusted for inflation to make the value of spending in previous years directly comparable with the specified year.

These measures show a large reduction in legal aid expenditure from around 2010-11,

reductions in criminal legal aid workloads and fees payable to legal aid providers.

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 strike action last year in the Crown Court, which in turn reduced workload completed and the associated expenditure, which means that many of the large increases are not indicative of underlying trends in the system.

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 September 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.

For the first time 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."

Ed: A quick note on the trends in domestic violence and immigration referred to in the LAA statistician's comment above which are described as increasing. Not to be nit-picky, but we aren't sure that we can agree with this conclusion. Of course, the LAA may be using different figures e.g. matter starts, to reach this conclusion. See below figures for domestic abuse applications (not family) received and granted (which can be seen at sheet 6.8 in the LAA stats):

2022-23	Apr-Jun (r)	2,699	135	60	0	2,894	2,306	103	52	0	2,461
	Jul-Sep (r)	2,801	119	52	0	2,972	2,407	88	45	0	2,540
	Oct-Dec (r)	2,535	143	63	0	2,741	2,131	104	55	0	2,290
	Jan-Mar (r)	2,951	141	79	0	3,171	2,556	104	67	0	2,727
2023-24	Apr-Jun (r)	2,654	112	58	0	2,824	2,314	93	52	0	2,459
	Jul-Sep (p)	2,664	134	47	0	2,845	2,246	106	41	0	2,393

The first highlighted column is for DV/CA applications received, and the second is DV/CA applications that were granted which seems to show a small decrease in applications

In regards to immigration, the increase in applications granted once again is marginal (sheet 6.1) from a total of 422 in the first two quarters of 2022, compared to 431 in the first two quarters of 2023. This is a 2.13% increase.

2022-23	Apr-Jun	24,498	265	429	2,803	27,995	23,245	196	424	2,470	26,335
	Jul-Sep	25,432	298	396	2,854	28,980	24,109	226	389	2,532	27,256
	Oct-Dec (r)	24,299	253	424	2,850	27,826	23,012	204	420	2,480	26,116
	Jan-Mar (r)	25,272	310	502	3,263	29,347	23,822	225	496	2,844	27,387
2023-24	Apr-Jun (r)	23,930	301	494	3,075	27,800	22,687	233	482	2,683	26,085
	Jul-Sep (p)	25,254	282	553	3,353	29,442	23,821	198	546	2,858	27,423

We do agree, however that there has been a significant increase in the number of mental health cases seen this quarter when compared with last year. From the first two quarters of 2022, there were 825 applications made, and 813 granted. For the first two quarters of 2023, there were 1047 applications made, and 1028 granted. This is a 26.91% increase in applications made, and a 26.45% increase in applications granted.

2022-23	Apr-Jun	24,498	265	429	2,803	27,995	23,245	196	424	2,470	26,335
	Jul-Sep	25,432	298	396	2,854	28,980	24,109	226	389	2,532	27,256
	Oct-Dec (r)	24,299	253	424	2,850	27,826	23,012	204	420	2,480	26,116
	Jan-Mar (r)	25,272	310	502	3,263	29,347	23,822	225	496	2,844	27,387
2023-24	Apr-Jun (r)	23,930	301	494	3,075	27,800	22,687	233	482	2,683	26,085
	Jul-Sep (p)	25,254	282	553	3,353	29,442	23,821	198	546	2,858	27,423

We look at the figures relating to HLPAS below.

Crime

Overview

“In the magistrates’ court the volume of completed work increased by 6% and associated expenditure increased by 16% when compared to the same period last year.”

Police Station Advice

“This category made up 70% of the Crime Lower workload between July and September 2023 but only 53% of the expenditure. The workload in this period increased by 3% compared to the previous year, with expenditure increasing by 24% (£7.8m). This is due to a 15% uplift in fees for police station advice introduced at the end of 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.

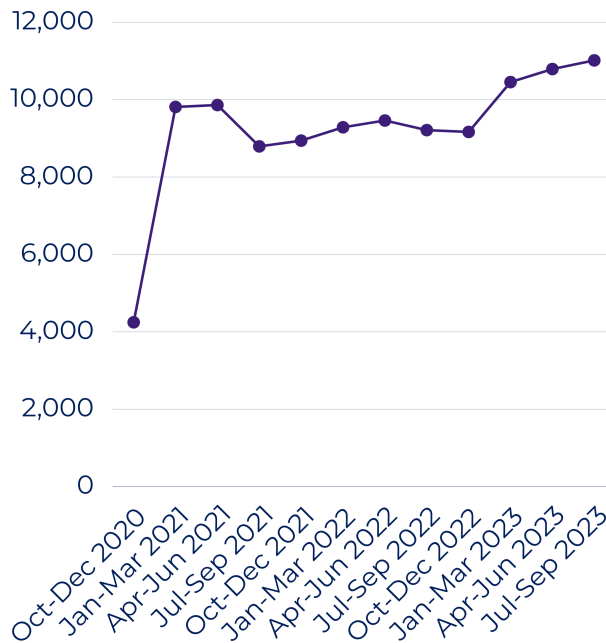
The majority of the police station advice workload (90% in July and September 2023) consists of suspects receiving legal help with a solicitor in attendance at the police station, with the rest mainly consisting of legal advice over the telephone.”

Magistrates' Court

“Legally-aided representation in the magistrates’ court comprised roughly one quarter, (28%) of the workload and around two fifths (40%) of expenditure in Crime Lower between July and September 2023. The volume of completed work (covered in this report) increased by 6% this quarter when compared to the same period of the previous year. Expenditure also increased by 16% (£4.3m).

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 11,015 completed claims costing around £2.9m this quarter.”

Number of completed claims for Sending Hearings’ Fixed Fee



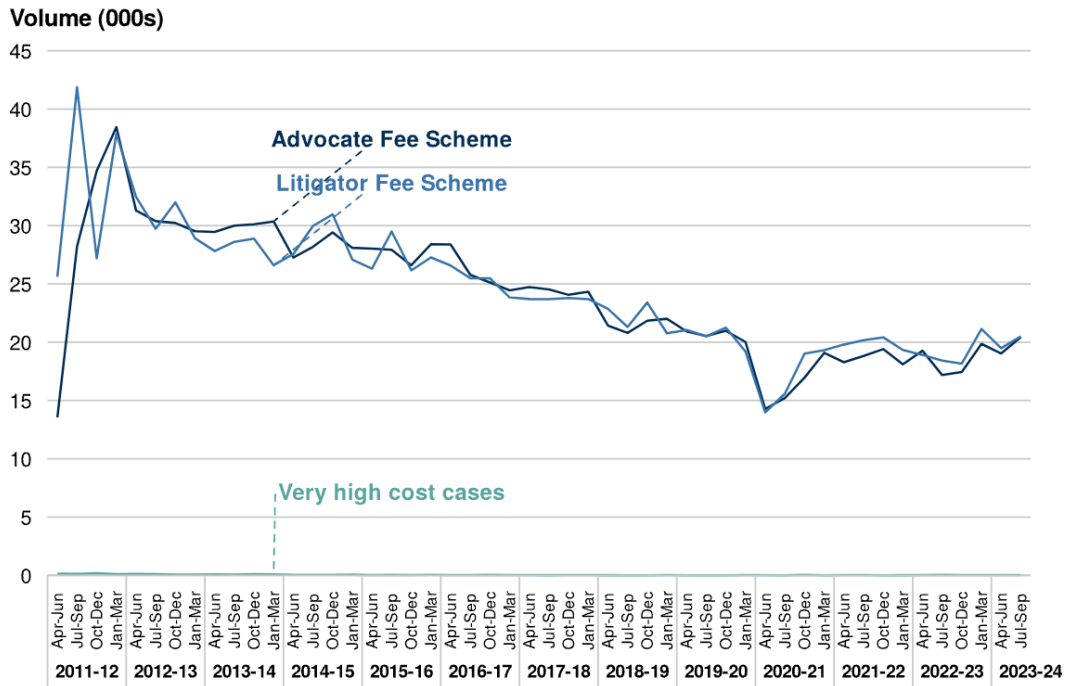
Source: Legal Aid Statistics July - September 2023, Gov.uk, 2023

Crown Court

“Criminal legal aid workload and expenditure in the most recent quarter is compared to a period covering the impact of strike 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 11% in July to September 2023 compared to the same period of the previous year, driven mainly by a 29% increase in trial claims.

In the advocate fee scheme, completed claims increased by 19% compared to the same period last year.”

September 2023



“In the litigator fee scheme, expenditure increased by 23% in July to September 2023 compared to the same period of the previous year. In the advocate fee scheme, the value of payments increased by 48% 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 5 defendants represented in the VHCC contracts that concluded in the July to September 2023 quarter. Expenditure on this work over the duration of the contracts (i.e. on the closed-case basis) was £3.7m. This compares with £14.1m 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.”

when compared to July to September 2022.

Conversely, advocacy assistance at parole board hearings increased by 16% compared to last year, although they have increased by 7% since last quarter. Advocacy at parole board hearings currently makes up around two fifths (43%) of prison law workload, but a much larger proportion of costs (79%), so expenditure on prison law overall increased by 17% over this period, with a 6% 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 prisons hearings continuing since the pandemic. Year-to-year comparisons show that workload increased by 49% and expenditure increased by 66% this quarter compared to last year.

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

Ed: The data on prison law for the last reported quarter shows modest increases in all areas of work that remain in scope. However, levels of work are still well below what they were a decade ago: in 2012/13 when there were 41,080 cases whereas in 2022/23 there were 14,911 cases.

We asked Dr Laura Janes 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.

This is also true in the wider context of legal aid. We have an idea of numbers of people who are able to access advice and provision through the legal aid scheme. Organisations undertaking work on a pro bono basis and Citizens Advice also have excellent figures on the numbers of individuals that they help, as do charities and NfPs who work in the advice sector and MPs who often see legal problems in their surgeries. However, there is a lack of consistency in how these figures are collected making it very difficult to have accurate measure of the scale of legal need out there, particularly as few if any organisations collect data on the number of clients who cannot access a service at all. More on that in our next news bulletin.

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 31,284 and 36,159 cases in July to September 2023 respectively, non-family cases make up only around a fifth of total civil legal aid expenditure (18%). Public family legal aid makes up just under two thirds (56%) of family legal aid work and around three quarters (70%) of expenditure.”

Legal Help

“In the last quarter, there was a 4% increase in legal help new matter starts compared to the same period of 2022. The volume of completed claims increased by 14% and expenditure increased by 6% in July to September 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

“There was a steep decline in family legal help immediately following the implementation of LASPO Act in April 2013, with a more gradual decline over the last 6 years.

From 1 September 2021, callers to the Civil Legal Advice (CLA) helpline with family issues are no longer referred to specialist telephone advice. In July to September 2023 family legal help starts increased by 9% compared to the same quarter last year. Completed claims increased by 4% and expenditure also increased by 4%.”

[Ed: Just by way of background for newer readers, under LASPO private law matters were essentially removed from the scope of family law other than those instances where domestic or child abuse had been evidenced, which remained eligible for legally aided help. This roughly translated to 80% of cases no longer being eligible for legal aid.](#)

[What remained in scope was child protection under public law \(i.e. where local authorities seek care, supervision or emergency protection orders regarding children, or place children for adoption\) or the matter concerns contact with children who have been](#)

would be more likely to use alternative dispute resolution services, particularly mediation, but the numbers of couples and families embarking upon mediation actually plummeted as we discuss further below.

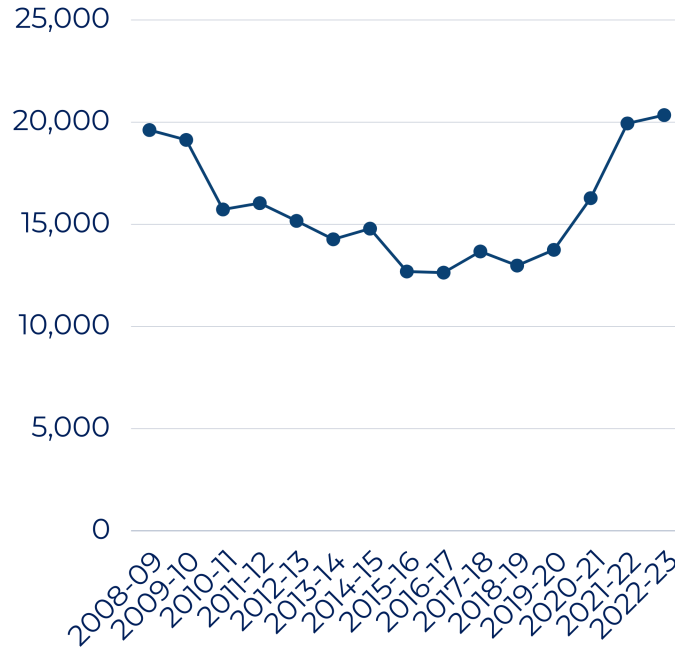
Family Civil Representation

“Certificates granted for family work increased by 2% in July to September 2023 compared to the previous year. Certificates completed increased by 15% and associated expenditure has increased by 14% 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 July to September 2023, certificates completed for domestic violence increased by 11% compared to the same period of the previous year.

In July to September 2023, applications for civil representation supported by evidence of domestic violence or child abuse decreased by 4% compared to the same period of the previous year. The number of certificates granted via the domestic violence and child abuse gateway decreased by 6% 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 84%.”

certificates completed



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

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 expenditure rapidly increased to levels temporarily exceeding pre-COVID figures. The volume of MIAMs increased by 6% 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 20% and total outcomes increased by 15%, of which 58% were successful agreements, and are now sitting at around half of pre-LASPO levels.”

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.”

Immigration

consists largely of asylum-related work. Having fallen by over 45% in April to June 2020, new matter starts in immigration decreased by 6% in July to September 2023 compared to the same quarter of the previous year. Completed claims in immigration increased by 27% in the last quarter compared to the previous year and expenditure increased by 15%."

Ed: We spoke to Zoe Bantleman, Legal Director of Immigration Law Practitioner's Association who said that the fact that new matter starts are dropping is evidence of the collapse of functioning effective immigration and asylum legal aid. They dropped by 6% from July to September 2023, when there were 21,855 asylum applications in Q3 of 2023 according to the Home Office's statistics. Ending at a similar period, Dr Jo Wilding's research shows the deficit is now at least 51%, 37,450 people, based on FOI data on immigration legal aid matter starts for the contract year 1 September 2022 to 31 August 2023.

Perhaps even more worrying is the 10% decrease in Exceptional Case Funding from the same quarter last year, driven by a fall in the immigration category. It was already incredibly difficult for human rights ECF applicants to find a legal aid representative with capacity and willingness to take on their case. The statistics suggests the situation is only worsening in immigration, which is abominable given the consistently high ECF grant rate for immigration (e.g. in the last quarter 448 out of 487 ECF applications were granted).

As for completed claims, the increase of 27% is likely to be tied with the legacy asylum backlog clearance exercise conducted by the Home Office.

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 decreased by 2% when comparing the latest quarter to the previous year. Completed claims also was unchanged and expenditure decreased by 3% over the same period."

Housing

"More than three quarters (82%) 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 and July to September 2013 following LASPO. Starts and completed claims nearly halved again during the first COVID-19 lockdown between January to March 2020 and April to June 2020. In more recent months, July to September 2023, there was a 6% increase in housing work starts compared to the same quarter the previous year. There were also a 21% increase in completed claims with a 1% decrease in expenditure.

Claims under both Housing Loss Prevention Advice Service (HLPAS) which replaced the Housing Possession Court Duty Scheme (HPCDS) in August 2023 and the previous scheme are now shown in table 1.2 note that these do not include the category of law covering legal help housing advice found in the 5.1/2/3 series of tables.

from the HPCDS with their expenditure being £0.4m and £0.3m respectively. The new HLPAS early advice service had 79 claims with expenditure under £15k.”

Ed: 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 one year only 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 of delivering legally aided social welfare advice. This has damaged the credibility of the scheme amongst many providers.
- Publicity for the scheme has been limited despite this being identified as a key element of the scheme.
- The housing law sector as whole is depleted and the county court network has been neglected which makes it a problematic space to launch HLPAS.”

He 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.

Education

Ed: A small segue here, the LAA statistics don’t normally include SEN tribunal statistics in civil (non-family) legal aid, however the following figures were released by Tribunal Statistics Quarterly for this same period and we thought that they were worthy of note.

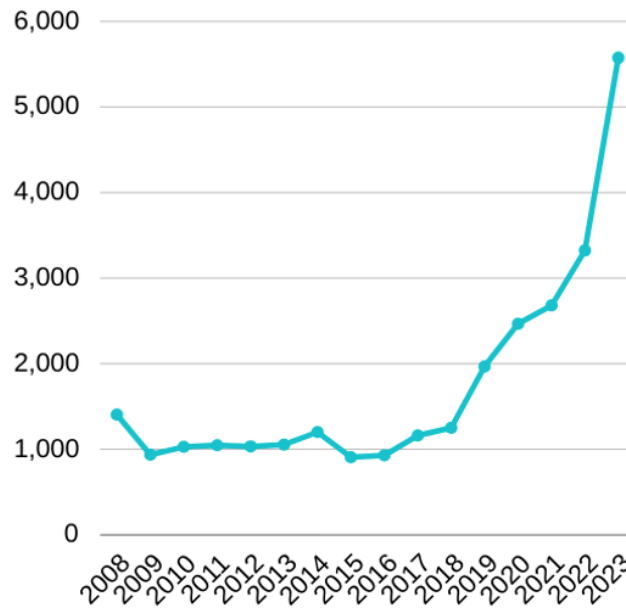
By way of background, much of education law was removed from scope by LASPO and legal aid only remains for cases of discrimination or special educational needs, but there remains a large (and growing) need in this area.

The Children and Families Act 2014 enabled parents and carers to request local authorities to carry out assessments if they believed their child needed an education, health and care plan (EHC). This plan entitles the child to more help through special educational needs support. Currently there are 389,171 Education and Health Care plans (EHCP) for pupils in schools in England (or 4.3% of pupils have an EHC plan). There are a further 1,183,384 pupils who need SEN support in schools in England.

The Government **published its plan** to improve special educational needs and

means legislation will be put forward at least 6 years after the plan was announced, and three years after **consultation**. **The national standards** will list what types of support should be made available; whose job it is to make different types of provision available; what budgets should be used to pay for support. Other suggested reforms include an emphasis on local partnerships, streamlined processes, increased school investment, and improved mainstream and alternative provision.

Number of Special Educational Needs and Disability cases outstanding at the end of each financial year



Tribunal Statistics Quarterly: July to September 2023, Gov.uk, 14 December 2023

Non-Family Civil representation applications

“The number of civil representation certificates granted in the last quarter increased by 3% compared to the same period of the previous year. The number of certificates completed increased by 18%, and the associated expenditure increased by 15% 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 £230.2m in July to September 2023, total civil representation expenditure where met by the LAA is the highest it has been since 2011-12”

Judicial Reviews

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 761 applications for ECF received from July to September 2023. This is a 10% decrease from the same quarter last year. 706 (93%) of these were new applications.

Of the 761 ECF applications received between July and September 2023, 97% (738) had been determined by the LAA as of 01 December 2023. 75% (557) of these were granted, 14% (100) were refused and 9% (64) rejected.”

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.

Rohini Jana
Head of Parliamentary Affairs
12 January 2024

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