



# Review of Civil Legal Aid

## Terms of Reference

### Introduction

1. The Ministry of Justice (MoJ) launched the Review of Civil Legal Aid (RoCLA) on 5 January 2023. The purpose of the Review is to identify options which will improve the sustainability of the civil legal aid system, ensuring it is capable of delivering access to justice over the long term. The Review will comprehensively examine the entirety of the system, drawing together multiple evidence sources, to determine how to improve the efficiency and effectiveness of civil legal aid, ensuring long term sustainability.
2. 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. The objective of the civil legal aid system in England and Wales is to provide access to publicly funded legal advice and representation where it is necessary, or in other words, to target resources where they are most needed. This will provide the foundation for all analysis and recommendations.

### Objectives & Outcomes

#### Objectives

3. The objective of the Review is to identify evidence-based options which will improve the **sustainability** of civil legal aid provision. In addressing the issue of sustainability, the Review will also consider the **efficiency** and **effectiveness** of the system.
4. To do this, the Review will need to comprehensively examine the civil legal aid system as it currently functions and gather evidence to understand problems that the system faces.

#### Outcomes

5. In order for the Review to achieve its overarching objective of ensuring sustainability, (and in doing so improving the efficiency and effectiveness of the system), the options identified by the Review should focus on achieving the outcomes that will ensure the civil legal aid system:
  - a. **is accessible to those eligible.** Users are able to successfully submit applications, navigate the system, and access information.
  - b. **has optimised and user-friendly processes.** Streamlined systems will minimise unnecessary administrative work for all parties, enabling a more productive use of time and resources.

- c. **offers a financially viable business option for legal aid providers** (both private and non-profit) and is an attractive career option that attracts a high-calibre and diverse workforce.

The Review will also consider and feed into wider MoJ strategic objectives, ensuring that access to justice:

- d. **encourages, where appropriate, the early resolution of disputes**, providing swift access to justice through early engagement, where appropriate.
  - e. **is technologically adept and adaptive, simplified and flexible**. It enables users to engage with the legal process and provides support to meet their needs, uses digital technology where appropriate, works cohesively with non-legal aid support, and supports the smooth running of the civil justice system.
6. The options identified will prioritise sustained provision across England and Wales and will provide the evidence needed to assess the value for taxpayer's money of future policy options, and the wider budgetary restraints on the department.

## Workstreams

7. The Review will include four analytical workstreams to adopt a comprehensive data-gathering approach, with the intention of identifying a range of options for enhancing the long-term sustainability of the civil legal aid market. The results of these four workstreams will be encompassed by a policy report in March 24, summarising key findings and outlining next steps for continuing work on sustainability.
- i. The **Economic Analysis** workstream will focus on reviewing and assessing the structure of the civil legal aid market. The analysis has two aims: 1) to assess how the market is currently functioning and identify the root causes of its problems, and 2) to propose structural changes that will enhance efficiency, effectiveness, and sustainability. This workstream will be contracted to an external supplier, is expected to take approximately six months. This workstream will deliver an interim report halfway through the contract and a final report upon completion.
  - ii. The **International Comparator** workstream will conduct a comparative analysis of civil legal aid systems in six countries which will be identified through preliminary research. The goal is to identify promising approaches to improve the efficiency and effectiveness of delivering civil legal aid and access to justice in England and Wales. This workstream will be conducted by the Open Innovation Team (an in-Government consultancy service) and is expected to take approximately six months.
  - iii. The **Data Publication** workstream will produce a series of documents summarising key descriptive information about the provision of civil legal aid services, with a focus on changes over time. Starting with an overview of the market based on data sharing agreements, subsequent reports will provide deep dives into key challenges and areas of interest. The data publications will be produced internally by the MoJ and reports will be published as they are completed.

- iv. The **User Journey Social Research** workstream will conduct end-user research with people who have previously received civil legal aid. The research aims to explore their experiences with the civil legal aid process, identify issues from a user perspective, and provide options to improve the process.
8. **Policy development** will take place alongside the research workstreams, consolidating the four analytical elements, providing cohesive narrative around all identified options, and ensuring they fit with RoCLA's overarching objectives and desired outcomes (as well as aligning with wider MoJ strategic objectives). Policy options will be considered in parallel to the analytical workstreams, developing options throughout the Review process and following its conclusion.

## Scope

### Key Themes

9. The Review will comprehensively examine the civil legal aid system, looking to identify options to improve the **sustainability** of the system, and through that examining **efficiency** and **effectiveness**. For the purposes of this Review, these terms are defined as such:

**Efficient:** optimal use of resources to deliver quality civil legal aid services in response to customer demand, paid at a fair rate for work done.

**Effective:** measurement of how well the civil legal aid system achieves its objective of ensuring that publicly funded legal advice is accessible where necessary.

**Sustainable:** a system that is able to attract and retain providers of sufficient number, quality and experience to provide effective legal advice, assistance and representation to all those eligible, ensuring provision to meet demand over the long term.

10. In gathering evidence to examine the legal aid system in relation to the above criteria, the Review will consider (but is not limited to looking at) the following topics:
  - a. the downstream benefits of legal aid,
  - b. administrative burdens on all key parties,
  - c. the procurement and flexibility of contracts,
  - d. the accessibility of legal aid across England and Wales,
  - e. the user experience and 'pinch points' in the system,
  - f. fee structures,
  - g. the diversity of legal aid providers, and
  - h. the ability for users to access appropriate advice in a timely way (including on complex and cross-cutting issues).

### Law Categories & Interdependencies

11. The Review will comprehensively analyse all eleven contract categories of law under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.<sup>1</sup> The Review will examine the legal aid system holistically, whilst also considering the links and interdependencies between categories of law.
12. The Review aims to capture the complexity and interconnected nature of the civil legal aid system, including the unique challenges presented by each law category, as well as the interdependencies between categories.
13. The Review will take account of other MoJ workstrands, such as Legal Support, to align with departmental aims and promote a coherent approach.

### **Key Parties**

14. The Review will consider all parties involved directly and indirectly in the civil legal aid system. This includes:
  - a. End-users
  - b. Voluntary organisations providing legal support and advice outside the legal aid framework (e.g. Citizens Advice)
  - c. Providers who deliver civil legal aid services
  - d. LAA.
15. The Review will cover both England and Wales comprehensively. All workstreams will capture evidence relating to provision in both countries, and where relevant, will analyse differences between the two countries, ensuring the nuances of the systems are reflected in the recommended options.
16. The Review will look at the geographical limitations of the provider base, examining differences between geographic areas to identify promising approaches as well as highlight concerns.

### **Key Sources**

17. The Review will evaluate a broad range of sources to analyse the system as a whole, using existing data, and where necessary, collecting new evidence. Evidence may be gathered through a variety of methods, including (but not limited to):
  - a) drawing together and evaluating existing academic research, reports, and databases on the provision of legal aid (including data provided by the Law Society and Bar Council);
  - b) engagement with key interested parties (see 'engagement' section), and;
  - c) further in-depth qualitative interviews and focus groups with practitioners and users.
18. The Review will consider previous reviews and attempts at reform in the legal aid sector and incorporate the lessons learned from those experiences into its policy development.

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<sup>1</sup> The eleven categories are: Claims Against Public Authorities, Clinical Negligence Category, Community Care, Discrimination, Education, Family, Housing & Debt, Immigration and Asylum, Mental Health, Public Law, Welfare Benefits. [2018 Standard Civil Contract Category Definitions \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672212/2018-Standard-Civil-Contract-Category-Definitions.pdf)

## Out of scope

19. The Review concerns the civil legal aid system and will not consider the sustainability of criminal legal aid.
20. Current work on eligibility for civil legal aid is out of scope but consideration is required of the impact of any eligibility changes on the current legal aid system.
21. The Review as a whole will only consider the provision of civil legal aid in England and Wales, although systems and reforms in other jurisdictions will be considered in the comparative analysis review to identify potential options which might inform the proposals for changes to the civil legal aid system in England and Wales.

## Engagement

22. The RoCLA project team will engage with stakeholders and seek their input throughout the Review process. A structured approach to stakeholder consultation is critical to the Review's success and will ensure that all findings are relevant and based on a thorough understanding of the issues affecting the civil legal aid system.
23. In order to this we proposed engaging with stakeholders through a general Stakeholder Advisory Group (SAG), which will include representatives from legal aid firms, representative bodies, not-for-profit organisations, charities and the Welsh and Scottish governments. Discussions at the SAG will focus on the Review as a whole and will provide a single forum in which to discuss key milestones and outputs.
24. To facilitate more focused and specialised discussions, the Review team will engage with smaller groups of stakeholders based on individual workstreams and categories of law.
25. Engagement with stakeholders will be planned around key milestones of the Review, and ad hoc engagement will take place for each workstream as required.

## Governance

26. The Senior Responsible Owners (SROs) for the Review are Clare MacDonald and Farah Ziaulla, Joint Directors of Access to Justice Policy at the MoJ. They are accountable for the Review's governance and will closely oversee the project team's work to ensure it adheres to the terms of reference and develops robust and defensible policy options.
27. The RoCLA project team will report directly to the RoCLA Programme Board at the MoJ, chaired by the SROs, which will meet at least bi-monthly to review progress. The SROs, in turn, will report to Ministers on a regular basis.
28. The MoJ will work with other interested Government departments to determine timelines for the publication of the report, evidence papers and any additional materials.

## Timing and outputs

29. The Review was launched in January 2023. The RoCLA project team will publish interim findings and reports for all workstreams; releasing evidence papers on its website ahead of the project's conclusion.

30. Following the completion of all workstreams by 31 March 2024, policy development will continue ahead of a public consultation on proposed options.