



Legal Aid
Agency

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Director of Legal Aid Casework

Annual Report 2020-21



HC 530

Director of Legal Aid Casework Report 2020-21

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Presented for laying before Parliament pursuant to Section 7(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

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Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2020-21.

My role as Director of Legal Aid Casework (Director) was created under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. It involves decision-making on individual legal aid applications. The Director has sole responsibility for individual cases, ensuring the independence of decision-making from government.

I have held this role since 8 July 2019, which is when I took over the roles of both Director and Chief Executive of the Legal Aid Agency on an interim basis. I was permanently appointed to both roles on 5 March 2021.

This report summarises the work carried out on behalf of the Director. It includes decisions made and the

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processes followed, including the mechanisms that exist for holding the Director to account and scrutinising the Legal Aid Agency's work.

The focus of this report is on the regulatory changes and amendments to the Lord Chancellor's guidance made during the year.

Some of the most important elements featured include changes to the Legal Aid Agency's means test calculations. These changes include a disregard for payments made under specific compensation schemes, such as the infected blood compensation schemes and legislative amendments to remove the existing cap on the amount of mortgage debt that can be deducted from a property's value. The effect of these changes means more individuals will pass the financial eligibility criteria for civil legal aid and this will help provide victims of domestic abuse better access to justice. There have also been further changes to

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expand the types of evidence of domestic abuse which may support an application for legal aid.

Changes were also made both as a result of the EU exit and in response to the continuing COVID-19 outbreak. In respect of the latter there have been amendments to remuneration rules for providers of legal aid.

I am very grateful to all our contracted providers of legal aid for continuing to operate and making sure that the interests of justice have been served throughout this challenging period. The Legal Aid Agency's teams have been resilient and ensured that a high quality of service has continued to be provided.

Contingency arrangements continue to be flexible to support providers and ensure there is room to operate. We have worked with stakeholders in making changes to deal with the pressure of the COVID-19

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outbreak. Details of these changes can be found on our comprehensive COVID-19 pages on GOV.UK.

A handwritten signature in black ink that reads "J Z Harbottle". The signature is written in a cursive style with a large, looping initial "J".

Figure 1: Jane Harbottle signature

Jane Harbottle
Director of Legal Aid Casework

Introduction

1. The Director of Legal Aid Casework (the Director) is designated by the Lord Chancellor under section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO Act). The role of the Director is to make determinations on the provision of legal aid in individual cases.
2. The Director acts independently from the Lord Chancellor and clear internal processes and structures are in place in the Legal Aid Agency (LAA) to ensure this independence is maintained. These are set out in more detail in this report.
3. In practice, many of the functions exercised by the Director are delegated to the LAA. The LAA came into existence on 1 April 2013 and is an Executive Agency of the Ministry of Justice (MoJ).
4. The Director is supported by the LAA Board in ensuring that robust practices are in place to

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maintain the independence of the decision-making process for granting legal aid.

5. The roles of the Director and the Chief Executive of the LAA may be held by the same person. However, different accountability and reporting arrangements exist for the two roles. From 8 July 2019 both roles have been held by Jane Harbottle.
6. This report explains how the Director has carried out the functions specifically entrusted to the Director under the LASPO Act over the last financial year. The LAA is separately publishing its Annual Report and Accounts which covers the wider remit of the organisation.

The role of the Director

7. The Director is responsible for making determinations on individual applications for civil and criminal legal aid as set out in Part 1 of the LASPO Act.¹
8. Under the LASPO Act, the Lord Chancellor can issue directions and guidance to the Director about how to carry out their functions, but they must not issue such guidance in relation to individual legal aid applications. The Director must comply with any directions given and have regard to any guidance issued as well as acting in accordance with the LASPO Act and associated regulatory framework.
9. The Lord Chancellor has not published any new guidance documents in 2020-2021. However, he has made amendments and additions to the

¹ <http://www.legislation.gov.uk/ukpga/2012/10/part/1/enacted>

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following, pre-existing guidance documents:

- I. The Lord Chancellor's Guidance under Section 4 of LASPO Act was amended in May 2020 to reflect the removal of the mandatory telephone gateway. This effectively removed a large part of section 8 of the Guidance. This was as a result of the Civil Legal Aid (Procedure) (Amendment) Regulations 2020 (detailed in the Annex at the end of this report).
- II. The Lord Chancellor's Guidance under Section 4 of LASPO Act was amended at paragraph 7.23 to add a reference to "retained EU rights", following the UK's exit from the EU.
- III. The Lord Chancellor's Guidance on Legal Aid Exceptional Case Funding (non-inquests) has been amended to ensure the guidance covers enforceable EU rights retained by the UK following its exit from the European Union and provides

detailed guidance for caseworkers.

IV. The Lord Chancellor's Guide to determining financial eligibility for certificated work has been amended and split into two separate documents – 1) the Lord Chancellor's guidance on determining eligibility for certificated work; and 2) the Lord Chancellor's guidance on determining eligibility for controlled work and family mediation. Amendments have been made to reflect changes following the UK's exit from the EU, changes to disregarded payments, removal of the mortgage cap and addition of a discretion of the Director in relation to low income homeowners as a result of the Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020 and the proceedings in *R (GR) v Director of Legal Aid Casework* [2020] EWHC 3140 Admin and *The Queen (oao) RH v DLAC v Lord Chancellor*

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CO/2883/2020.

10. The regulatory and legislative framework has also undergone changes in 2020-21. A full list of those may be found in the Annex at the end of the report.
11. Although the Lord Chancellor has no role in relation to individual funding decisions, an annual meeting is also arranged to discuss the carrying out of the functions of the office. This is to include discussion of any themes that have emerged relating to the Director's role, the legal aid scheme and lessons learned. This year the meeting took place on 22 June. The topics referred to in this report were discussed.

Decision-making process and structure

12. Decisions on cases and the functions of the Director are delegated to the LAA. Specifically, these determinations are made by caseworkers within Case Management, a team of around 780 staff. This team is divided into two groups, each managed by a Deputy Director:

- Civil and Crime Case Management
- Exceptional and Complex Cases Team (ECCT). This group combines the former High Cost Civil Team, Exceptional Case Funding Team and National Immigration and Asylum Team.

13. Civil Case Management includes Legal Merits, Family High Cost Cases, Means, Civil Finance, Records Management and Central Business Support teams as well as dedicated Contact Centre Teams. The impact of the COVID-19 outbreak has necessitated a focus on the development and

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implementation of contingency processes to support providers and clients. The LAA accepts digital signatures and works closely with providers to help clients who are struggling to provide application evidence. The LAA also works closely with the Process Efficiency Team and the Civil Contracts Consultative Group. This collaborative approach has allowed the LAA to develop its communication of contingency processes, ensuring information is clear and easily accessible. Increased engagement with providers through these groups has also enabled the LAA to make positive improvements to processes. These include an increase in caseworker ownership so there is continuity of service for providers, the launch of the customer service Twitter account, the creation of a new training website to support providers using CCMS and the launch of the application fixer service as an informal way to challenge rejections and improve

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communication around decision making. These all help the LAA's commitment to ensuring that legal aid is accessible to all who are eligible.

14. The changes to civil legal aid eligibility referred to at paragraph 9 above (for example the removal of the mortgage cap), and set out in more detail in the Annex, has meant more individuals would now pass the financial eligibility criteria for civil legal aid. The pilot of the new Apply service continues with an increasing number of providers using the service and providing critical feedback that will allow the LAA to continue with its agile approach to development of this product.
15. Crime Case Management includes the Criminal Applications Team, Crime Billing Team, Criminal Finance Team, a Contact Centre Team and the Criminal Cases Unit. In response to the COVID-19 outbreak Crime Case Management colleagues rolled out a hardship scheme to increase cash flow

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to providers. Contingencies are in place to ensure that all work types can be billed even where the submission of paper files is impractical. The roll out of the LAA secure file exchange has assisted with this. The 48-hour key performance indicator target for criminal applications has been maintained.

16. The ECCT deals with the more costly and complex civil cases funded by the LAA as well as immigration cases, except those funded via controlled work. Many applications received by the Director and referred to the ECCT continue to have a high profile. ECCT case managers are located around the country but the majority are based in London and Brighton.
17. Exceptional Case Funding (ECF) falls under the ECCT. The ECF scheme covers all applications outside the scope of ordinary civil legal aid funding under the LASPO Act. ECF can cover all forms of service including legal help and controlled legal

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representation. As set out in section 10 of the LASPO Act, ECF applies where the failure to provide legal aid would be a breach, or where there is a substantial risk of a breach, of:

- a) the individual's Convention rights [within the meaning of the Human Rights Act 1998 (HRA)];
or
- b) any rights of the individual to the provision of legal services relating to retained enforceable EU rights.

18. ECF applications must be considered on an individual basis, in light of the facts and the statutory requirements for funding and having regard to the guidance on ECF and case law. Applications can be, and sometimes are, made directly by applicants.
19. To ensure that legal aid legislation and guidance issued by the Lord Chancellor are applied in a consistent manner, advice and training have

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continued to be provided to all LAA caseworkers, tailored according to the particular role of each casework team.

20. Legal advice for the Director is provided by the Central Legal Team staffed by lawyers employed by the Government Legal Department but assigned to and co-located within the LAA. The team is headed by the Principal Legal Adviser and acts solely for the LAA when exercising the functions of the Director or the operational legal aid functions of the Lord Chancellor. There are clear protocols restricting what information members of that team may share outside of the LAA.
21. Decisions on individual applications are delegated to caseworkers with the opportunity for escalation as necessary. This includes a referral mechanism to the Central Legal Team for high profile matters which include cases proceeding to the Court of Appeal or the Supreme Court. This process of

escalation and referral provides the Director with the requisite assurance that any decisions made are lawful.

Appeals and reviews

22. All determinations made by the Director are subject to a right of internal review where requested.

Furthermore, unless the application is for ECF or the Director determines that the case is not within the scope of the LASPO Act there is a further right of appeal to an Independent Funding Adjudicator (IFA), a solicitor or barrister or Fellow of the Chartered Institute of Legal Executives from private practice. IFAs are members of the Funding and Costs Appeals Review Panel (FCARP). Panel members are not employees of the LAA and act independently.

23. The decision of the IFA on certain issues is binding on the Director. These are: any assessment of the prospects of success of a case, whether a matter

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has overwhelming importance to the client, the cost-benefit ratio of the proceedings and discharge or revocation based on a client's behaviour. Other issues are referred to the Director for reconsideration. Some panel members in their roles as Independent Costs Assessors (ICAs) consider appeals against the provisional assessment of costs by the Agency's staff.

24. Appeals are allocated according to the specialist areas of law declared by each panel member.
25. There is a sub panel, the Special Controls Review Panel (SCRCP) which is formed of three specialist members of the FCARP who consider appeals relating to certain high cost cases and other more complex cases. Within the FCARP there are five SCRCP members, but more are being recruited.
26. Aside from SCRCP, most appeals are considered by a single panel member.

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27. On 2 October 2020 the Lord Chancellor approved an extension of the membership criteria to enable solicitors no longer working for an organisation with a LAA contract to join the panel provided they had worked for a contract holder within the past two years. Membership was also opened to Costs Lawyers with a practising certificate from the Costs Lawyers Standards Board, for the consideration of costs appeals only.
28. On 13 October 2020 the LAA began a competitive recruitment exercise for five-year terms on the panel. The successful candidates will replace the 37 members who left the panel on 31 December 2020 having already served two terms, the maximum permitted under the Governance Code of the Commissioner for Public Appointments. The recruits will join the 33 members remaining on the panel as at 1 January 2021.

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29. If a client is dissatisfied with the final determination following a review and/or appeal, then the only recourse left is litigation.

Litigation

30. The Director's decision-making can be challenged by a claim for judicial review. Of note this year was *R (oao GR) v Director of Legal Aid Casework [2020] EWHC 3140 (Admin) (GR)*, which concerned a challenge to the Director's interpretation and application of The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. The Claimant was refused legal aid for private family law proceedings. Legal aid was refused on the basis that the Claimant's capital in her property (which she co-owned with her-ex partner) exceeded the capital threshold of £8,000 as set by the Regulations. The Claimant argued that there was a discretion by virtue of Regulation 31(b) which allows property to be valued at an amount which appears

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to be equitable, and that the property should therefore have been excluded from the means calculation. Alternatively, the Claimant argued that if there was no such discretion, the regulations should be 'read down' to prevent the Claimant's Convention (ECHR) rights from being breached. The Court found in the Claimant's favour in determining that the discretion in Regulation 31(b) is *not* limited to the valuation of assets other than those specifically mentioned in Regulations 32-37, but rather it is a discretion available in *all* cases save in respect of the valuation of money. The Court directed that the decision on legal aid be re-taken to take into account that discretion (although it did not state how that discretion should be exercised in the circumstances of the case).

31. In a related case, *R (oao RH) v Director of Legal Aid Casework v Lord Chancellor CO/2883/2020*, settlement was agreed where it was necessary for

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the Director to retake her decision on funding to take into account the discretion the Court found she had in GR.

32. In *R (Director of Legal Aid Casework) v. Southwark Crown Court, interested party Professor Swingland* [2021] EWHC 397 (Admin) (Swingland), the Director issued judicial review proceedings in October 2019 to challenge three orders made by the Southwark Crown Court in relation to an application made by a defendant for an order of judicial apportionment under the Criminal Legal Aid (Contribution) Orders Regulations 2013. An order of judicial apportionment is an order by a trial judge that an individual pay only a proportion of the cost of representation in the Crown Court, on the ground that it would be manifestly unreasonable to pay the whole amount. It arises where an individual is liable to repay the cost of their criminal legal aid under a Capital Contribution Order. A defendant can apply

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for a judicial apportionment order if they have been convicted of one or more but not all offences, they were charged with in the Crown Court.

33. The Director challenged the three orders in the following way. The first order (that the defendant pay 15% of his costs of representation) had been made considerably outside the 21-day time period given by the regulations and was nearly two years late. The second order incorrectly directed the Director to apply the 15% apportionment to the defendant's capital contribution order amount, rather than to the costs of representation (and so the second order required the Director to calculate the defendant's capital contribution order unlawfully). The third order was challenged on the grounds that the judge was wrong to have concluded that he was *functus officio*, having given the Director seven days to apply to the court if the LAA disagreed with the second order, and which the LAA had done.

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34. At a hearing on 9 February 2021, the Divisional Court set aside all three orders and provided helpful guidance on how Crown Courts are to deal with judicial apportionment applications that are made outside the 21-day time limit. In essence, an application could be entertained out of time if there were extenuating circumstances which would result in an injustice if the application were not heard. The Court made it clear that it was unnecessary for a defendant to wait until they had received a Capital Contribution Order to make the application, because the Crown Court judge was only concerned with making an order that a proportion of costs are to be paid, and not with the quantum of that proportion.

Accountability

35. There has been no change to the manner in which the Director's functions continue to be open to public scrutiny. The mechanisms in place allowing the LAA's work to be scrutinised and interested parties to hold the Director to account are explained below.

Parliamentary questions and freedom of information requests

36. Members of both Houses of Parliament can table parliamentary questions asking about the work carried out by the Director in respect of cases or individuals. Similarly, the public can also submit requests for information held by the LAA under the Freedom of Information Act 2000 and Data Protection Act 2018.

37. In 2020-21 the LAA received 14 requests for information under the Freedom of Information Act

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and 1 parliamentary question relating to the Director of Legal Aid Casework specifically. The majority related to ECF and individual case funding.

38. Information about an individual legal aid client is likely to be personal data and can only be released in very limited circumstances where the case meets the criteria set out within the Data Protection Act 2018.

Complaints

39. The LAA thoroughly investigates every complaint it receives, using a two-tier complaints procedure. The initial complaint gives the LAA the chance to review the way the matter was handled at a local level and put the situation right if possible. If a complainant is not content with the initial response, they can escalate their complaint and request a further review. If the complainant remains dissatisfied with the escalated response, they have the right to refer

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their complaint to the Parliamentary and Health Service Ombudsman via their local MP.

40. Complainants may also request financial redress from the LAA where there has been maladministration. As with complaints, if the complainant is dissatisfied with the LAA's response they have the right to refer their complaint to the Parliamentary and Health Service Ombudsman via their local MP.
41. The LAA does not separately record complaints or compensation claims which relate specifically to the remit of the Director. However, a significant proportion of all complaints the LAA receives relate to individual cases and casework decisions.

Statistics

42. The LAA deals with applications for legal aid across various categories of law. The LAA publishes national statistics on numbers of applications within the Legal Aid Statistics bulletin. This is published every quarter, and statistics covering the period to the end of March 2021 were published online on 24 June 2021².

² See <https://www.gov.uk/government/collections/legal-aid-statistics>

Equality and Diversity

43. The LAA is subject to the public-sector equality duty under section 149 (1) of the Equality Act 2010 and contributes to the delivery of the Ministry of Justice Equality, Diversity and Inclusion strategy.
44. To build the capability of LAA staff during 2020/21, in order to create an inclusive workplace and deliver fair and accessible services, as a minimum:
 - a. staff were required to complete Civil Service Learning courses on Diversity and Inclusion, Disability Confidence and RACE awareness;
 - b. managers were required to participate in Inclusive Leadership training workshops and are subsequently expected to deliver Inclusive Teams training to their direct reports and teams by Summer 2021; and

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c. senior leaders completed cultural awareness training.

45. Training was supplemented by an ongoing programme of communication and engagement events delivered in partnership with diversity champions and staff networks. During 2020 we launched two new staff networks our Be Unique race network and DisAbility.
46. A clear expectation was set that all LAA staff should have a specific Belonging (Diversity, Inclusion and Wellbeing) Objective, tailored to their role and published new guidance to support this.
47. In Autumn 2020, the first LAA Race Action Plan was published. It was developed in partnership with the LAA Be Unique race network, following a series of listening events.
48. The Executive Leadership Team were required to complete Public Sector Equality Duty refresher

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training. Expectations and guidance have been strengthened around when, where and how to complete effective impact assessments informing decisions made through our governance forums.

49. The LAA has maintained its Disability Confident Leader accreditation which was awarded on 29 March 2021.
50. The LAA requests that applicants for legal aid provide us voluntarily with some personal equality information. This information enables the LAA to understand the needs of potential legal aid applicants better and compile statistics on their diversity.
51. The Director has reviewed the equal opportunity information that recipients of legal aid provided during 2019-20 to monitor the extent to which the LAA continues to cater for the diverse population of England and Wales. The LAA published statistics relating to the diversity of legal aid clients over the

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period 2020-21 as part of the Legal Aid Statistics bulletin on 24 June 2021, and the Director will continue to review this information over the coming year.

Conclusion

52. The role of the Director is an important one and the LAA continues to demonstrate its capabilities in responding to legislative and regulatory changes and in providing the support that the Director needs to perform her duties.
53. The LAA has continued to react with speed and flexibility to casework needs and emerging questions of legal principle. This has included instigating important legal proceedings as in Swingland, dealing with the impact of GR and its legislative consequences as well engaging constructively with the LAA's provider base. That is on top of the unprecedented impact of the COVID-19 outbreak upon casework teams and legal aid providers and is demonstrative of the commitment to ensuring the accessibility of legal aid for those who are eligible.

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54. Notwithstanding the strains placed upon the LAA this year, it has taken significant steps in creating a Race Action Plan to help establish a genuinely inclusive workplace that delivers fair and accessible services. The LAA has committed to actively opposing systemic racial disparities by consciously committing to support structural changes in political, economic, social and work life that impact marginalised groups. Moving forwards this work is a priority for the organisation.
55. A copy of this report has been sent to the Lord Chancellor in accordance with section 7(3) of the LASPO Act. The Lord Chancellor will lay a copy of the report before Parliament.

Annex

Amending instrument	Original instrument	Summary of changes
<p>The Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations 2020</p>	<p>The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013</p>	<p>Regulation 24 of the 2013 Regulations makes provision for payments that must be disregarded from the calculation of gross or disposable income, as well as payments which the Director has a discretion to disregard for the purposes of the means assessment for obtaining legal</p>

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		<p>aid. Regulation 40 made similar provision in relation to the calculation of disposable capital. Regulations 24 and 40 have been amended so that the assessment of an individual's income and capital resources will not include payments made under infected blood schemes funded by the UK Government, the Vaccine Damage Payments Act 1979 and the Government funded trust for persons suffering from variant Creutzfeldt-Jakob disease. Further amendments</p>
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		<p>provide that payments under a second category of charitable and Government funded compensation schemes may also be disregarded by the Director. These amendments came into force on 8 January 2021.</p> <p>Additionally, amendments to Regulation 37 remove the limit on the amount of mortgage or other secured charge which must be deducted when calculating an individual's financial interest in land for the purposes of capital. This deduction was previously</p>
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		<p>limited to a maximum of £100,000. Regulation 38 has also been amended to enable the Director to determine an individual's main dwelling for the purposes of Regulations 38 and 39. This provision was previously within Regulation 37, but will no-longer have any application to Regulation 37 following the removal of the mortgage cap. It will continue to apply to Regulations 38 and 39 of these Regulations. The amendments</p>
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		to Regulations 37 and 38 came into force on 28 January 2021.
The Civil Legal Aid (Remuneration) (Amendment) (No.2) (Coronavirus) Regulations 2020	Amended the Civil Legal Aid (Remuneration) Regulations 2013 and revoked the Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020	Came into force 07 October 2020. The amendments inserted a new definition into the Civil Legal Aid (Remuneration) Regulations 2013 of online procedure advocacy services and added two new tables of fees to enable payment of remuneration by the Lord Chancellor to legal aid providers of civil legal services, where the HMCTS online procedure is used.

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		<p>The amendments also amended Regulation 11 of the Civil Legal Aid (Remuneration) Regulations 2013 to change the circumstances in which barristers in independent practice can apply for payment on account for certain civil legal services they have provided. Following these amendments, applications for payment on account can be made, in all relevant cases, at three monthly intervals. Regulation 12 of the 2013 regulations was also amended to</p>
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		<p>increase the amount that the Lord Chancellor may pay to a barrister on account. The amount was increased to 80% of the amount the Lord Chancellor considers to be the barrister's reasonable fees. These amendments were directed at the circumstances during the Covid-19 outbreak.</p> <p>The earlier 2020 Regulations were revoked with the effect that the amendments they had made, would cease to have effect. The Civil Legal</p>
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		<p>Aid (Remuneration) (Amendment) (No.2) (Coronavirus) Regulations 2020 amendments also put transitional provisions in place.</p>
<p>The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020</p>	<p>Civil Legal Aid (Remuneration) Regulations 2013</p>	<p>These were revoked by the (No.2) Regulations referred to directly above but came into force on 8 June 2020. These amendments had amended Schedule 1 of the Remuneration Regulations and the provision made for Immigration and Asylum fees, by adding two fees to enable payment of remuneration by the Lord Chancellor</p>

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		to providers of civil legal services where the HMCTS online procedure was used.
The Civil Legal Aid (Procedure) (Amendment) Regulations 2020	The Civil Legal Aid (Procedure) Regulations 2012	<p>These came into force on 15 May 2020. These amendments made the following changes:</p> <ul style="list-style-type: none"> i) Omitted the definition of face-to-face provider in Regulation 2 of the Procedure Regulations and revoked Part 2 of the Procedure Regulations relating to Gateway Work;

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		<ul style="list-style-type: none">ii) Amended Regulation 23 to enable a determination about legal help for inquests to have effect from a date earlier than the determination where the Director has disapplied financial eligibility limits in relation to the application;iii) Amended Regulation 61 to set out circumstances when an individual applying for family mediation need not attend the provider's premises in person;
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		<ul style="list-style-type: none">iv) Amended Schedule 1 to expand further the types of evidence of domestic violence which may support an application for civil legal services under Paragraph 12 of Part 1 of Schedule 1 LASPO Act;v) Confirmed that the amendments made to revoke Part 2 (and to remove the definition of face-to-face provider) did not apply to applications on which determinations were made
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		<p>before these Regulations came into force. Nor did the amendments in relation to supporting evidence for domestic violence come into force until these Regulations came into force</p>
<p>The Civil Legal Aid (Amendment) (EU Exit) Regulations 2019</p>	<p>Sections 10, 32 and 42 of LASPO Act and paragraph 2(2)(b) of</p>	<p>Whilst these Regulations were made on 27 February 2019, they did not come into force until Implementation Period (IP) completion day (31 December 2020). They were made in exercise of the powers in section 8(1)</p>

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	<p>Schedule 3 LASPO Act</p> <p>Paragraph 44 of Schedule 1, Part 1 LASPO Act</p>	<p>of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. They made the following amendments:</p> <ul style="list-style-type: none">i) Amended Sections 10, 32 and 42 of LASPO Act and paragraph 2(2)(b) of Schedule 3 LASPO Act to add “retained” before the words “enforceable EU rights”.
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		<p>ii) Repealed Paragraph 44 of Schedule 1, Part 1 LASPO Act, which had provided for legal aid in relation to cross-border disputes;</p> <p>Section 10 LASPO Act relates to Exceptional Case funding, the amendment allows for this to continue post IP completion day in relation to retained enforceable EU rights in the same way it had previously for enforceable EU rights.</p>
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		<p>Section 32 LASPO Act explains that civil legal services described in Part 1 of Schedule 1 do not include services relating to any law other than the law of England and Wales, subject to some exemptions listed within Regulation 32, including by order of the Lord Chancellor. The amendment was to paragraph 32(3)(a)(ii) and allows for the Lord Chancellor to make such an order only if he considers that is necessary to do so because a</p>
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		<p>failure to do so would result in a breach of an individual's Convention rights under the Human Rights Act, or any rights of an individual to the provision of legal services that are <u>retained</u> enforceable EU rights.</p> <p>Section 42 is the interpretation section, into which the following definition was added:</p> <p><i>“retained enforceable EU right” means a right (as modified from time to time) which forms part of retained EU law by virtue of section</i></p>
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		<p style="text-align: center;"><i>3 or 4 of the European Union (Withdrawal) Act 2018.”.</i></p> <p>Paragraph 2(2)(b) of Schedule 3 relates to legal aid for exceptional case determinations for legal persons. The amendment allows for this to continue post IP completion day in relation to retained enforceable EU rights in the same way it had previously for enforceable EU rights.</p>
<p>The Jurisdiction and Judgments</p>	<p>Paragraphs 17 and 18 of LASPO</p>	<p>Amended Paragraphs 17 and 18 of LASPO Act Schedule 1, Part 1, by</p>

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<p>(Family) (Amendments etc.) (EU Exit) Regulations 2019</p>	<p>Act Schedule 1, Part 1</p>	<p>adding the words “Transitional EU arrangements” to the title of the paragraph. This has the effect of making these civil legal aid services in scope post IP completion day, only where Transitional EU arrangements apply. Paragraph 17 of Schedule 1, Part 1 relates to civil legal services in relation to international agreements concerning children and Paragraph 18 relates to civil legal services in relation to international agreements concerning maintenance.</p>
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<p>The Immigration, Nationality and Asylum (EU Exit) Regulations 2019</p>	<p>Paragraph 30 of LASPO Act Schedule 1, Part 1</p>	<p>Amended Paragraph 30 of LASPO Act Schedule 1, Part 1 to amend what is in scope of civil legal services in relation to immigration rights to enter and remain in the UK post IP completion day.</p>
<p>The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2020</p>	<p>The Criminal Legal Aid (Remuneration) Regulations 2013</p>	<p>These came into force on 27 August 2020. In particular, the regulations make provision for payments in respect of the consideration of unused material under both the advocates' graduated fee scheme and the litigators' graduated fee scheme.</p>

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		<p>Provision is also made in relation to fees payable for special preparation under the advocates' graduated fee scheme.</p> <p>The regulations also amend the advocates' graduated scheme in respect of payments for cases where there is a guilty plea or a cracked trial and amend Schedule 4 of the regulations to provide the amount of a fixed fee in relation to work undertaken in a case sent from the</p>
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		magistrates' court to the Crown Court for trial.
The Criminal Legal Aid (Coronavirus, Remuneration) (Amendment) Regulations 2020	Regulation 21 of the Criminal Legal Aid (Remuneration) Regulations 2013	Came into force on 1 May 2020. They amended the provision which provides for the remuneration of litigators and advocates in respect of advice, assistance and representation made available under Sections 13, 15 and 16 of LASPO Act. In particular, it provides the circumstances under which litigators and advocates may be paid hardship payments. These amendments reduced the time period

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		<p>which must pass before a litigator or advocate may apply for a hardship payment from six months after instruction to one month after instruction. It also reduced the minimum value at which a hardship payment may be paid from £5,000 to £450. The amended regulations only applied to applications for hardship payments made on, or after, the day the regulations came into force.</p>
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<p>The Sentencing Act 2020</p>	<p>Section 33 LASPO Act Paragraph 1 Schedule 1, Part 1 of LASPO Act</p>	<p>This made minor amendments amending references from the Criminal Justice Act 2003 to the Sentencing Act 2020. It also amended Paragraph 1, Schedule 1, Part 1, of LASPO Act adding parenting orders under section 366 or 369 of the Sentencing Act into scope of civil legal aid services provided in relation to the care, supervision and protection of children.</p>
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