



Legal Aid
Agency

Providing access to justice through working with others
to achieve excellence in the delivery of legal aid

Legal Aid Agency

Director of Legal Aid Casework

Annual Report 2022-23



Legal Aid Agency

Director of Legal Aid Casework

Annual Report 2022-23

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

Ordered by the House of Commons to be printed on 21 March 2024.



© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at Legal Aid Agency, 102 Petty France, London, SW1H 9AJ

ISBN 978-1-5286-4763-2

E03096059

Printed on paper containing 40% recycled fibre content minimum

Printed in the UK by HH Associates Ltd. on behalf of the Controller of His Majesty's Stationery Office

Contents

Foreword	2
Introduction	3
The role of the Director	4
Regulatory and legislative framework changes	4
Decision-making process and structure	7
Appeals and reviews	9
Litigation	10
Accountability	12
Parliamentary questions and Freedom of Information Act requests	12
Complaints	12
Statistics	14
Equality and Diversity	15
Conclusion	16

Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for 2022-23.

My role as Director of Legal Aid Casework was created under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. As Director I am ultimately responsible for the decision making on individual legal aid applications, 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 of Legal Aid Casework and Chief Executive of the Legal Aid Agency (LAA).

This report summarises the work carried out on my behalf as Director. It includes decisions made and the processes followed, including the mechanisms that exist for holding me as the Director to account and scrutinising the LAA's work.

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

A handwritten signature in black ink, reading 'J Harbottle', with a large, stylized flourish at the end.

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 LASPO Act 2012. The role of the Director is to make determinations on the provision of legal aid in individual cases.
2. The Director acts independently of the Lord Chancellor and other Ministers. Clear internal processes and structures are in place in the LAA to ensure that 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 LAA staff under section 5(4) of the LASPO Act 2012. 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 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. Both roles have been held by Jane Harbottle since 8 July 2019.
6. This report explains how the Director has carried out the functions specifically entrusted to the Director under the LASPO Act 2012 over the last financial year. The LAA has separately published its [Annual Report and Accounts](#) that 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 (including Exceptional Case Funding) and criminal legal aid as set out in Part 1 of the [LASPO Act 2012](#).
8. Under the LASPO Act 2012, the Lord Chancellor can issue directions and guidance to the Director about how to carry out their functions, but he 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 2012 and associated regulatory framework.
9. Guidance issued by the Lord Chancellor regarding the functions of the Director includes:
 - [The Lord Chancellor's Guidance under section 4 of the LASPO Act 2012](#)
 - [The Lord Chancellor's Guide to determining financial eligibility for certificated work](#)
 - [Lord Chancellor's guidance on determining financial eligibility for Controlled Work and Family Mediation](#)
 - [The Lord Chancellor's Guidance – Exceptional Case Funding.\(Inquests\)](#)
 - [The Lord Chancellor's Guidance – Exceptional Case Funding.\(Non-Inquests\)](#)
10. The Lord Chancellor has not published any new guidance documents in 2022-23. However, he has made amendments and additions to the following, pre-existing guidance documents:
 - I. The Lord Chancellor's Guidance under section 4 of the LASPO Act 2012 was amended in August to reflect the removal of the requirement to provide evidence of attempts to secure a conditional fee arrangement in modern slavery compensation cases. The amendment can be found by reading a new paragraph, 7.19, in the guidance.

Regulatory and legislative framework changes

11. The regulatory and legislative framework has also undergone changes in 2022-23:
 - I. The majority of amendments to legislation in relation to the Director's functions under civil legal aid have concerned the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013:

- a. Amendments¹ with effect from 10 January 2023 provided that fuel support and cost of living payments under, respectively, the Social Security (Additional Payments) Act 2022 and Energy Prices Act 2022 would be disregarded in calculating an applicant's disposable income and capital.
 - b. Following the challenge in *CR v DLAC* (CO/4226/2021), amendments² were made with effect from 10 February 2023 in relation to appeals and proposed appeals to the First-tier Tribunal (Special Educational Needs and Disability) or the Education Tribunal for Wales. These provide for legal help and legal representation to be available on a non-means tested basis to a foster parent or approved prospective adoptive parent of the child who is the subject of the (proposed) appeal. Non-means tested legal aid is also available to a former foster parent of a young person (16 to 25 years) with whom the young person continues to reside under a staying put arrangement, where that young person lacks capacity to bring the appeal.
 - c. Amendments³ with effect from 1 March 2023 provide that legal representation is available to the parent of, or person with parental responsibility for, a child to oppose an adoption or placement order on a non-means tested basis.
- II. Amendments⁴ to the Civil Legal Aid (Merits Criteria) Regulations 2013 with effect from 1 March 2023 provide that applications for legal representation from a parent of, or person with parental responsibility for, a child to oppose an adoption or placement order have only to satisfy a very limited merits test (as applicable to analogous applicants in first instance care proceedings).
 - III. The Civil Legal Aid (Procedure) Regulations 2012 were amended⁵ with effect from 1 March 2023 in relation to the requirements for evidence of domestic violence to accompany applications for services described in paragraph 12 of Part 1 of Schedule 1 to the LASPO Act 2012 (concerning family private law finance and children proceedings). This amendment confirms that a letter or

¹ Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations (S.I. 2022/1376), inserting regulation 24(w) and (x) and regulation 40(l) and (j).

² Civil Legal Aid (Financial Resources and Payment for Services) (Amendment) Regulations (S.I. 2023/45), inserting regulation 5 (o) to (r). Note that these were replaced by provisions of the same effect from 3 August 2023, following a report by the Joint Committee on Statutory Instruments.

³ Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order (S.I. 2023/150), inserting regulation 5(da).

⁴ Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order (S.I. 2023/150), amending regulation 65.

⁵ Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Legal Aid: Family and Domestic Abuse) (Miscellaneous Amendments) Order (S.I. 2023/150), amending paragraph 11 of Schedule 1.

report from an appropriate health professional confirming injury or a condition consistent with domestic violence can be based on an examination conducted by telephone or video conference.

- IV. Within the criminal legal aid scheme, amendments⁶ have been made with effect from 10 January 2023 to the Criminal Legal Aid (Financial Resources) Regulations 2013 in relation to fuel support and cost of living payments under, respectively, the Social Security (Additional Payments) Act 2022 and Energy Prices Act 2022. Such payments are to be deducted from the calculation of annual gross income in applications for representation in the magistrates' court and Crown Court. They are also to be deducted in the calculation of disposable income and capital in applications for advice and assistance.
- V. The Criminal Legal Aid (Contribution Orders) Regulations 2013 were also amended⁷ with effect from 10 January 2023 such that fuel support and cost of living payments are to be disregarded in the calculation of gross annual income and disposable specified capital.
- VI. The Criminal Legal Aid (General) Regulations 2013 were amended⁸ with effect from 17 January 2023 to include proceedings under sections 342H and 342I of the Sentencing Code (created under the Sentencing Act 2020) in relation to serious violence reduction orders within the definition of prescribed criminal proceedings under section 14(h) of the LASPO Act 2012.
- VII. The Criminal Legal Aid (Standard Crime Contract) (Amendment) Regulations (S.I. 2022/995) updated the Criminal Legal Aid (General) Regulations 2013 and the Criminal Legal Aid (Financial Resources) Regulations 2013 to reflect the contract in force with effect from 1 October 2022.

⁶ Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations (S.I. 2022/1376), amending regulations 11, 20 and 33.

⁷ Legal Aid (Financial Resources and Contribution Orders) (Amendment) Regulations (S.I. 2022/1376), amending regulations 10 and 28.

⁸ Criminal Legal Aid (General) (Amendment) Regulations (S.I. 2022/1370), inserting regulation 9(fa).

Decision-making process and structure

12. Determinations on individual applications and the functions of the Director are in practice delegated to LAA staff⁹. Specifically, individual case determinations are made by Case Management, a team of around 805 staff. This team is divided into two groups, each managed by a Deputy Director (DD):

- Civil and Crime Case Management – DD Alistair Adan
- Exceptional and Complex Cases Team (ECCT) – DD Dr Samantha Milton

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.

14. The LAA continues to work closely with stakeholders via the Process Efficiency Team (PET) and the Civil Contracts Consultative Group. Increased engagement with legal aid providers (providers) through these groups has enabled the LAA to make positive improvements to processes. The PET meets with representative bodies and providers monthly to identify operational issues and business improvements. In particular, the LAA has worked in close partnership with providers via this forum to address issues around decision-making, for example by increasing case ownership and communications and streamlining of the decision-making process where submissions are raised regarding exercise of discretion around trapped capital. The LAA has also provided training to providers through a series of 'help us say yes' seminars to ensure it receives full and complete applications to minimise unnecessary delays and rejections. Following successes across civil legal aid, the first crime focussed PET was held on 25 May and an internal working group was set up to take forward the actions raised at the meeting.

15. This work has been underpinned by the LAA Strategy, published in July, which sets out four key guiding principles for the LAA: being user-centred; getting things right first time, being open and transparent; and becoming a responsive, diverse, learning organisation. All of these enable the LAA to deliver faster, better outcomes that work for legal aid clients, providers, taxpayers and LAA staff. This is further

⁹ For some forms of service, individual determinations are delegated to legal aid providers. Civil: Legal Help, Help at Court, Family Help (Lower), Family Mediation and Controlled Legal Representation. Crime: Advice and Assistance, including Advocacy Assistance, under sections 13 and 15 of the LASPO Act 2012.

supported by the LAA's Customer Service Strategy that focuses on putting its users at the heart of services.

16. The LAA has continued to develop the Civil Apply service following the launch of the pilot last year. Over 67 providers are now onboarded onto the service and can submit applications in domestic abuse cases and some family cases (known as Section 8 cases). Over 19,500 applications have successfully come through the new service so far. Section 8 functionality for clients over the age of 16 was released in January 2023, meaning that submissions could be made for Section 8 for clients over 16 years old where domestic abuse was not a factor. In addition, a prototype for Crime Apply was developed which will replace the existing application process for criminal legal aid, using electronic forms (known as CRM14 and CRM15 eForms).
17. Crime Case Management includes the National Criminal Applications Team, Crime Billing Team, Criminal Finance Team, a Contact Centre Team, and the Criminal Cases Unit.
18. The LAA continued to work closely with His Majesty's Courts & Tribunals Service to support the rollout of the Common Platform in criminal courts, ensuring it can process applications and bills for cases that come through the platform. By the end of this reporting period the platform was live in 117 courts across England and Wales, and the LAA had processed over 148,000 applications and more than 75,000 bills.
19. The LAA has continued to work closely with providers and policy colleagues in the MOJ to implement legal aid policy reform. This has included implementing the 15% uplift to criminal legal aid fees as part one of implementation of Criminal Legal Aid Independent Review (CLAIR). The LAA will continue to work in partnership with MOJ, Justice Digital and MOJ Policy, to deliver complex change at pace to support the legal aid market and the Department's objective on swift access to justice.
20. 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.
21. 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 2012. ECF can cover all forms of service including legal help and controlled legal representation. As set out in section 10 of the LASPO Act 2012, ECF applies where the failure to provide legal aid would be a breach, or where there is a risk of a breach, of:

- a. the individual's Convention rights (within the meaning of the Human Rights Act 1998); or
 - b. any rights of the individual to the provision of legal services relating to retained enforceable EU rights.
22. 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.
23. To ensure that legal aid legislation and guidance issued by the Lord Chancellor are applied in a consistent manner, advice and training have continued to be provided to all LAA caseworkers, tailored according to the particular role of each casework team.
24. Legal advice to the Director is provided by the Central Legal Team staffed by lawyers employed by the Government Legal Department and assigned to 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.
25. Decisions on individual applications are delegated to caseworkers with the opportunity for escalation as necessary. Ultimately, the decision to grant or refuse an application remains that of the Director.

Appeals and reviews

26. 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 2012, there is a further right of appeal to an Independent Funding Adjudicator (IFA). IFAs can be 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.
27. 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 has overwhelming importance to the client,
 - the cost-benefit ratio of the proceedings, and
 - discharge or revocation based on a client's behaviour.

28. Other issues are referred to the Director for reconsideration. Some panel members in their roles as Independent Costs Assessors consider appeals against the provisional assessment of costs by LAA staff.
29. Appeals are allocated according to the specialist areas of law declared by each panel member.
30. There is a sub panel, the Special Controls Review Panel (SCRP), 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 15 SCRCP members.
31. Aside from SCRCP, most appeals are considered by a single panel member.
32. There were 66 panel members as at 31 March 2023. A further recruitment exercise for the FCARP will take place in 2023-24. An induction package and online training will be provided for those who are appointed.
33. If a client is dissatisfied with the final determination following a review and or appeal the only recourse remaining is litigation.

Litigation

34. The Director's decision-making in individual cases is susceptible to challenge in the courts, including by way of judicial review. Further, the Director is affected by any wider challenges brought to the operation of the legal aid scheme.
35. Significant cases in the course of 2022-23 include *R Detention Action v Lord Chancellor* [2022] EWHC 18 (Admin), a judicial review challenge to the operation of the Detained Duty Advice Scheme (DDAS) in Immigration Removal Centres; and *R (on the application of Johnson) v Lord Chancellor* [2022] EWHC 1175 (Admin), which concerned a challenge to the LAA's assessment of fees payable under the Interim Fixed Fee Offer (IFFO) scheme for a very high cost criminal case.
36. In *Detention Action*, the Claimant argued that the Lord Chancellor was failing to ensure access to justice for detainees where the scheme (which is operated by the LAA) was alleged to be operating with systemic deficiencies that were not being addressed by powers available to the Lord Chancellor under his contract with DDAS providers, and that by extension, a decision by the Lord Chancellor in January 2021 to extend the contracts of all DDAS providers for a year was unlawful. The Administrative Court concluded, on the evidence, that it could not be said that the LAA's operation and monitoring of the scheme on behalf of the Lord Chancellor was unlawful, where it did not create any impediment to detainees obtaining access to justice. On the contrary, the Court found that the LAA was doing its best to

facilitate access to justice. That being so, it was not unlawful for the Lord Chancellor to have extended the DDAS contracts for a further year.

37. In the Johnson case, a group of criminal barristers argued that the LAA failed properly to apply the IFFO scheme in a very high-cost criminal trial and issued judicial review proceedings. The IFFO scheme contains a calculator which generates a fee for a criminal case based on various proxies, including the trial categorisation and length and the volume of served and unused evidence. If the fee produced by the calculator does not produce a fee which represents the nature or value of the case, then the LAA can revise the fee.
38. In this case the LAA decided to reduce the fee because the figures produced by the IFFO calculator were, in the Court's words, "astronomical", in order to reflect the time which Counsel actually spent on the case. This reduction was held by the Court to be lawful and permission for judicial review was refused.

Accountability

39. 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 Act requests

40. 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. All questions and answers are published on [Parliament.UK](https://www.parliament.uk). 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.
41. In 2022-23 the LAA received 235 requests for information under the Freedom of Information Act. Of these, 36 related to the functions of the Director of Legal Aid Casework specifically. The majority related to grants of legal aid under ECF, applications in the Immigration and Asylum category of law and the means assessment process.
42. In the same period there were 32 legal aid operations-related parliamentary questions. Of these, six related to the Director of Legal Aid Casework specifically. All responses to written parliamentary questions are published on [Parliament.UK](https://www.parliament.uk).
43. Information about an individual legal aid client is likely to be personal data and can only be released where the case meets the criteria set out within the UK General Data Protection Regulation and the Data Protection Act 2018.

Complaints

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

45. 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.
46. The LAA does not separately record complaints or compensation claims that relate specifically to the remit of the Director. However, a significant proportion of complaints are from individuals who are unhappy with decisions not to grant or extend legal aid funding.

Statistics

47. 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 2023 were published on 29 June 2023.
48. The number of applications for legal aid in the magistrates' court increased by 3% in 2022-23 compared to 2021-22. Overall, 163,673 applications were received, of which 97% were granted. 82,541 applications for legal aid in the Crown Court were received in the same period, matching the volume from the previous financial year. The proportion of Crown Court applications granted remains at almost 100%.
49. 114,147 applications for civil representation were received between April 2022 and March 2023.
50. 11,602 applications for civil representation supported by evidence of domestic violence or child abuse were received between April 2022 and March 2023, down 3% from the previous financial year. 9,811 certificates for civil representation were granted in the same period via the domestic violence and child abuse gateway.
51. 3,408 ECF applications were received between April 2022 and March 2023, which is an 8% decrease compared to the previous financial year.

Equality and Diversity

- 52. 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 [MOJ People Strategy](#).
- 53. The LAA requests that applicants for legal aid provide some personal equality information. This information enables the LAA to understand better the needs of legal aid applicants and compile statistics on their diversity.
- 54. The Director has reviewed the equal opportunity information that recipients of legal aid provided during 2022-23 to monitor the extent to which the LAA continues to cater for the diverse population of England and Wales.
- 55. The LAA published statistics relating to the diversity of legal aid clients over the period 2022-23 as part of the [Legal Aid Statistics bulletin](#) published on 29 June 2023, and the Director will continue to review this information over the coming year.

Conclusion

56. 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 their duties.
57. A copy of this report has been sent to the Lord Chancellor in accordance with section 7(3) of the LASPO Act 2012. The Lord Chancellor will lay a copy of the report before Parliament.



© Crown copyright 2024

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

E03096059

ISBN 978-1-5286-4763-2

