



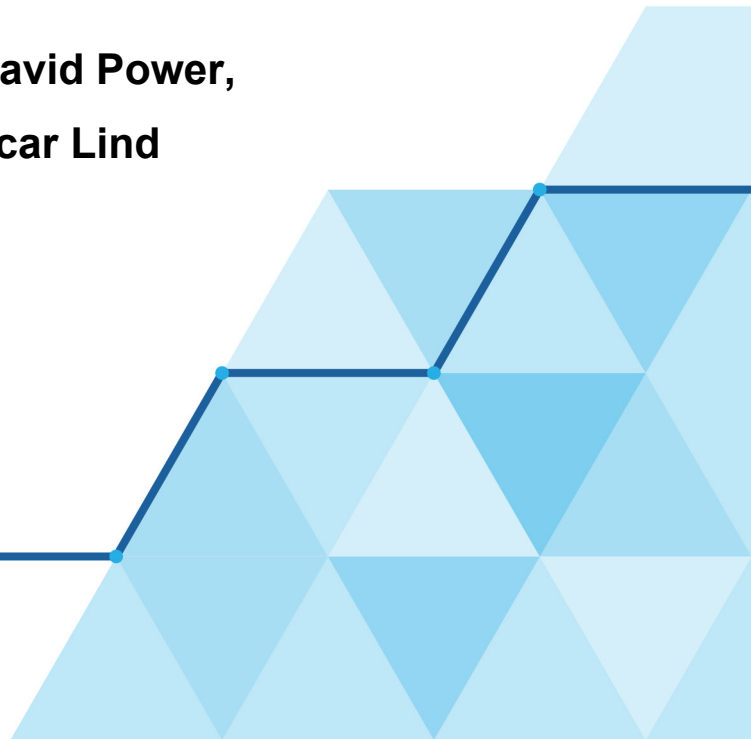
Ministry  
of Justice

# Civil Legal Aid Advocacy: Qualitative Research with Practicing Advocates and Instructing Solicitors

## Informing the Review of Civil Legal Aid (RoCLA)

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IFF Research

Ministry of Justice Analytical Series  
2024



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First published 2024



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# 1. Summary

## Introduction and research approach

The Ministry of Justice (MoJ) launched the Review of Civil Legal Aid (RoCLA) in January 2023. As set out in the Review's Terms of Reference, 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.<sup>1</sup> MoJ commissioned IFF Research to conduct qualitative research on advocacy in the civil legal aid sector in Winter 2023 as part of the RoCLA workstream on Data Publications.

Advocacy is the process of presenting arguments, making legal submissions, and representing clients' interests in courtrooms or legal proceedings. In the lower courts, advocates such as solicitors and barristers can act on behalf of their clients but in higher courts advocacy is restricted to barristers only.

The legal aid sector is overseen by the Legal Aid Agency (LAA), but it does not have comprehensive data on advocates working under legal aid contracts. This is because the contracts for legal aid cases are held by solicitors only, who then may advocate for their clients in court or choose to assign another advocate, usually a barrister, to do this, in which case they personally transfer the fee from the LAA to the assigned advocate. The research aimed to bridge this knowledge gap by discovering which advocates are working under legal aid contracts.

The research aimed to understand factors important in participating solicitors' selection of an advocate; how advocacy is introduced to prospective advocates in their career and how it is perceived; what incentivises and disincentivises advocates to do civil legal aid work; and advocates views on the sustainability of civil legal aid advocacy, suggestions for improvement, and of the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and COVID-19 on the sector.

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<sup>1</sup> Ministry of Justice (2023). Guidance: Review of Civil Legal Aid. [online] gov.uk. Available at: <https://www.gov.uk/guidance/civil-legal-aid-review> [Accessed 1 Feb. 2024].

The research approach involved 40 semi-structured qualitative interviews with advocates and instructing solicitors working in civil legal aid in England and Wales, including in family, housing, community care, immigration and asylum, and mental health law. The research included 22 solicitors (12 instructing and working as advocates, six instructing but not working as advocates, four working as advocates only), 15 barristers and three non-barristers practising advocacy.

Throughout this report all individuals interviewed are described as “participants”. Terms such as “participating solicitors”, “participating barristers” and “participating instructing solicitors” are used when exploring findings specific to those groups.

## **Findings about the context in which legal aid advocates operate**

Advocates operate in a complex and changing system. Developments in the legal system and policy changes around pay rates, fee structures and the level of bureaucracy and administration were key themes in the responses of solicitors and barristers that participated in the research.

All participants expressed concerns about increased bureaucracy and administrative work involved in civil legal aid advocacy. They felt civil legal aid pay rates were too low for the type and volume of work they carried out. The fixed-fee system was deemed too complex and did not reflect the work carried out by advocates, causing additional burdens and payment delays.

All participants felt LASPO negatively impacted the civil legal aid advocacy sector because it removed financial support for many case types, and the eligibility criteria was made stricter for case types that were still eligible. It was felt by participants that this had reduced access to justice and contributed to more litigants in person, which in turn impacted the efficiency of court proceedings. Participants view LASPO as a ‘false economy’ because they believed the societal and financial consequences have outweighed the cost savings which were the primary aim of the legislation.

The wellbeing, social and economic changes triggered by the COVID-19 pandemic had far-reaching impacts on individuals and organisations in both the short and long term. It

resulted in a radical and swift transition to the widespread use of remote hearings – where some or all participants attend by video or audio rather than in-person to ensure court proceedings could continue. Participants felt these changes impacted the personal and legal needs of civil legal aid clients; the capacity, capabilities and wellbeing of legal aid practitioners; and the capacity and effectiveness of the legal aid advocacy and court systems.

Participants practising in different categories of law discussed the positive and negative impact of government policy on their ways of working. Examples from housing and immigration and asylum cases illustrate the dynamic and changing environment in which advocates operate.

## **Process for taking on civil legal aid work and appointing advocates**

Participating barristers commonly carried out civil legal aid advocacy, as the role of a barrister is to provide in-court representation for appellants. However, participating solicitors and chartered legal executives can – and often did – advocate in lower courts where they have the necessary rights of audience.

A reoccurring view among all participants was that they would aim to take on as many legal aid cases as they thought viable. It was rare that they or their firms declined cases due to personal preference. Where participants or their firms did turn down cases, this was for three reasons: a lack of capacity, a lack of expertise, and/or financial viability of taking on specific cases.

Participating solicitors made decisions on whether to appoint a barrister or instead advocate themselves or allocate the case to a colleague within the firm based on three factors: financial factors; complexity of case and hearings; and client and case needs. However, the nature of the case also played a role. Participating mental health solicitors were more likely than participating solicitors practising in other categories of law to advocate themselves, even in more complex cases. Participating mental health advocates and instructing solicitors suggested that the nature of mental health law was such that advanced knowledge was valued more in court than pure advocacy skills, and that this knowledge typically resided in solicitors rather than barristers.

When participating solicitors had made the decision to instruct counsel, they often found themselves facing a shortage of barristers who could take on the case. Consequently, participating solicitors reported needing to advocate themselves even when it might have been preferable to appoint a barrister. The shortage of barristers was common if the hearing was at short notice; in Wales, South West England and the Midlands; and/or in lower courts.

## Careers in civil legal aid advocacy

Most participants started working in civil legal aid at the beginning of their career.

Participants shared three reasons why the beginning of one's career was the best time to start working in civil legal aid. Firstly, it is seen as a natural progression from focusing on particular modules at university, which lead into specific areas of law funded through legal aid. Secondly, starting early enables lawyers to become familiar with the legal aid system from the outset of their careers. Lastly, starting at the beginning of your career enables the development of key skills, particularly in working with vulnerable clients.

Participants stated motivations for working in civil legal aid advocacy included the desire to represent those in vulnerable situations; an interest in a specific legal area which falls under legal aid, and the wide range of topics covered and therefore greater scope for creativity in their work.

Disincentives to a career in civil legal aid advocacy included the higher time investment and lower pay compared to privately funded work. Participating barristers, in particular, described this as an issue during the initial stages of their careers due to the self-employed nature of their profession and the necessity to establish their expertise and reputation. The financial viability of civil legal aid advocacy was further complicated by issues such as payment delays and uncertainties about receiving the 'right' amount after submitting case bills.

A recurring experience amongst participants was observing their colleagues and peers leaving civil legal aid advocacy due to concerns over work-life balance and pay.



When participants were asked if they would still choose to work in civil legal aid advocacy if they had the opportunity to start again, opinions were mixed. Some shared they would not choose to work in legal aid, and others were unsure. This was predominantly due to hours worked, pay, and issues with the administrative systems, some of which relate to the introduction of LASPO. This is despite participating advocates' strong motivation to 'do good'. However, there was still much job satisfaction from civil legal aid advocacy that came from helping clients in need. There was also a 'call to arms' expressed by some participants, and a sense of wanting to be part of the movement in helping to improve and sustain the civil legal aid advocacy sector.

## **Perceptions about the sustainability of the civil legal aid sector**

All participants viewed the current advocacy system as unsustainable and risking access to justice. The reasons for this view were the diminishing capacity of the civil legal aid advocacy sector due to an 'ageing' legal aid workforce and few opportunities for advocacy training for solicitors, and low pay and bureaucracy. The lack of availability of civil legal aid advocates across geographical areas, as well as across categories of law, led to increased pressure on the remaining advocates.

## **Suggestions from participants**

Participants suggestions for improving the sustainability of the sector included increasing funding and simplifying pay processes, expanding qualifying case types and eligibility, improving consistency in the court systems and infrastructure, and raising the profile of civil legal aid earlier in careers. Participants also shared suggestions about improved communications to the sector, and further research among legal professionals and legal aid users about their advocacy experiences.

## 2. Introduction

### 2.1 Background

Legal aid is the system of public funding to help meet the costs of legal advice, representation in court or at a tribunal and family mediation. Legal aid is provided to eligible users, with eligibility being determined by the type of case and the financial circumstances of the individual. It is administered in England and Wales by the Legal Aid Agency (LAA).

The Ministry of Justice (MoJ) launched the Review of Civil Legal Aid (RoCLA) in January 2023. As set out in the Review's Terms of Reference, 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.<sup>2</sup>

The Review includes four analytical workstreams:

1. The **Economic Analysis** workstream focused on reviewing and assessing the structure of the civil legal aid market. The analysis had aims to assess how the market is currently functioning and identify the root causes of its problems. This analysis has been conducted by an independent contractor, PA Consulting.
2. The **Comparative Analysis** workstream has conducted a comparative analysis of civil legal aid systems in six countries. The goal was to identify promising approaches to improve the efficiency and effectiveness of delivering civil legal aid that could be transferable to the system in England and Wales.
3. The **Data Publication** workstream produced a series of documents summarising key descriptive information about the provision of civil legal aid services, with a focus on changes over time.
4. The **User Research** workstream conducted end-user research with people who have previously received civil legal aid, as well as with legal aid providers. The

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<sup>2</sup> Ministry of Justice (2023). Guidance: Review of Civil Legal Aid. [online] gov.uk. Available at: <https://www.gov.uk/guidance/civil-legal-aid-review> [Accessed 1 Feb. 2024].

research aimed to explore their experiences with the civil legal aid process and identify issues from a user perspective.

This report is part of the Data Publications workstream. It sets out the findings from primary qualitative research with advocates and instructing solicitors involved in civil legal aid contracts in England and Wales, carried out by IFF Research from November to December 2023.

## 2.2 Research objectives

MoJ commissioned this qualitative research to address gaps in its knowledge about different types of civil legal aid system advocates; perceptions of advocates involved in controlled work, such as immigration and mental health cases; advocates experiences in situations where fees are not directly paid by the LAA, typically affecting family law cases; and advocates perceptions of their advocacy career. MoJ identified those gaps through considering key sources for the overall Data Publications workstream, including data sharing agreements with the Law Society and the Bar Council.

Through this research the MoJ aims to gain insights into the various types of advocates operating in the civil legal aid system, with a specific focus on understanding the role of solicitor advocates and the reasons why they deliver advocacy services. This evidence will inform the development of policy development.

## 2.3 Research questions

This research aimed to understand the experience of advocates and instructing solicitors' perceptions of civil legal aid as a sector and perceptions of advocacy in civil legal aid. The study focused on civil legal aid in the areas of family, housing, community care, immigration and mental health. The research questions were:

1. Who are the advocates that are not easily identified in LAA data?
2. What are the perceptions of different types of advocates in the civil legal aid sector?
3. What factors are important in solicitors' selection of an advocate?
4. How does civil legal aid advocacy work present in most advocates' careers and how is it perceived?

5. What incentivises and disincentivises advocates to do civil legal aid work?
6. How sustainable is civil legal aid advocacy felt to be by advocates?
7. What recommendations do advocates have for improvement?
8. Is there any good practice that the introduction of LASPO removed?
9. What was the impact of COVID-19 and is the sector better or worse than before the pandemic?

### 3. Research approach

The research involved qualitative interviews with 40 advocates and instructing solicitors involved in civil legal aid contracts in England and Wales. Interviews were conducted remotely by video call or telephone. Table 1 summarises the range and number of participants. Please note that one interview participant decided to withdraw their participation one month after fieldwork was completed; their input is therefore not included in this report.

**Table 1: Interviews conducted, by criteria**

#### Primary

Criteria	Sub-criteria	Target	Interviewed
Type	Instructing solicitor, also practising civil legal aid advocacy	8–10	12
Type	Instructing solicitor, not practising civil legal aid advocacy	4–5	6
Type	Solicitor practising civil legal aid advocacy	4–5	4
Type	Barrister practising civil legal aid advocacy	10–15	15
Type	Non-barrister practising advocacy: other	2–4	3
Law category	Family	8–12	12
Law category	Immigration & asylum	8–13	9
Law category	Mental health	8–14	12
Law category	Other civil: housing, education, community care etc	8–15	7

#### Secondary

Criteria	Sub-criteria	Interviewed
Number of years' experience as an advocate	Less than year	0
Number of years' experience as an advocate	1–5 years	9
Number of years' experience as an advocate	6–10 years	11
Number of years' experience as an advocate	11–20 years	8
Number of years' experience as an advocate	21+ years	12

<b>Criteria</b>	<b>Sub-criteria</b>	<b>Interviewed</b>
Employer type	Chambers	14
Employer type	A for-profit firm that has contracts for civil legal aid work	18
Employer type	A not-for-profit specialist advice provider	2
Employer type	Law centre	5
Employer type	University law clinic	0
Employer type	Sole practitioner	1
Employer type	Other	0
Location	England	20
Location	Wales	5
Location	England and Wales	15
<b>Total</b>		<b>40</b>

Most participants employed by for-profit or not-for-profit firms, or law centres, said their organisation did a combination of legally aided work and private work; either an equal amount of both legally aided and private work, or more legally aided work with some private work. Two participants were employed by organisations that exclusively did legally aided work, and four participants said legal aid work made up a minority of their organisation’s overall caseload.

### **3.1 Recruitment**

Thirty-three participants were recruited through direct emails about the research by MoJ or IFF, and from recruited participants inviting their peers or colleagues to take part in the research (called ‘snowballing’).

MoJ emailed sector contacts and practitioner groups such as the Legal Aid Practitioners Group, Young Legal Aid Lawyers, the Bar Council and The Law Society, and the research team emailed all four Inns of Court. The organisations were asked to share a research information sheet with their networks and invite potential participants to take part.

Recipients of this email could then opt-in to the research by contacting IFF using the contact details provided.

To further support engagement with diverse participants, a snowballing recruitment approach was used. Participants were invited to share information about the research to other prospective participants in their network.

Seven participants were recruited through desk research to identify further potential participants for sample quotas that the above two approaches were not sufficient to secure, such as lawyers working in housing or education law, or in Wales.

Once participants had agreed in principle to an interview, IFF's in-house recruiter scheduled a telephone call to complete a short screening questionnaire (included in Appendix D), to ensure the criteria for participation described above was met, to capture information about participants circumstances to inform analysis, such as demographics and to schedule an interview. After confirming an individual was eligible, based on their responses to the screening questionnaire, the recruiter confirmed their consent to take part in the research. After confirming an interview date, the recruiter sent a confirmation email. Two days before the interview the recruiter sent a reminder email.

## **3.2 Fieldwork**

The interviews were conducted between 13<sup>th</sup> November and 8<sup>th</sup> December 2023 and lasted up to 60 minutes. A semi-structured topic guide was used during the discussions and can be found in Appendix E. These topics map onto research questions detailed above.

Table 2 summarises the topics covered during the interviews. These topics map onto research questions detailed above.

**Table 2: Overview of topics covered during interviews**

Background	Motivations	Process of legal aid work	Sector changes	Suggestions
<ul style="list-style-type: none"> <li>• Overview of firm</li> <li>• Current roles/ responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• When and why first took up legal aid</li> <li>• How legal was introduced to them</li> <li>• When in career is best to get involved in legal aid</li> <li>• How would they feel about starting a legal aid career now</li> </ul>	<ul style="list-style-type: none"> <li>• Proportion of workload that is funded through legal aid</li> <li>• Process of taking on legal aid and factors affecting this</li> <li>• Process of appointing counsel and factors affecting this</li> <li>• Barriers to taking on legal aid work and to appointing counsel</li> </ul>	<ul style="list-style-type: none"> <li>• Recent changes in sector</li> <li>• Changes since LASPO</li> <li>• Impact of Covid-19</li> </ul>	<ul style="list-style-type: none"> <li>• How could people be more motivated to get into legal aid?</li> <li>• How to overcome barrier?</li> </ul>

As part of interviewer introductions, they repeated the key information captured in the recruitment information leaflet and recruitment screening call. Interviewers confirmed participants had no questions and their consent to take part remained valid before beginning the interview.

### 3.3 Data management and analysis

Throughout the interview, researchers continually weighed up the implications of what the participant said and devised relevant follow-up questions (where useful to draw out additional insight). Through this process of active listening and ‘weighing up’ feedback, the researcher ensured they were clear on the implications of the discussion.

Where given permission, researchers recorded the interviews on video-conferencing software on Microsoft Teams or via a digital recording device. Recordings were stored on a secure, encrypted folder only the research team had access. Researchers used the recording and interview summary to review their initial view on the implications of the discussion. This involved triangulating feedback from different sections of the interview.

Researchers then organised and coded this textual data in a bespoke Excel-based analysis framework. The framework was structured around thematic headings relating to the research objectives. Individual interviews could then be compared to determine the



commonality of experiences. The framework contained coded 'classification' variables, to allow the qualitative data to be ordered/'cut' in different ways to explore any subgroup differences. A senior researcher checked the framework coding of at least one interview per researcher, providing feedback to improve the specificity and clarity.

Researchers then processed the findings through abstraction and interpretation. For example, considering the challenge of low fees reported by participants within the policy context of civil legal aid (abstraction, by considering this data within the wider context of the research) and using that to inform the finding as it relates to the research question (interpretation, which goes beyond description of data). Researchers devised a more analytic set of building blocks to categorise and classify the data. The first stage was 'description', identifying the range of things said about a particular theme; how this varied; and the different types of responses that could be identified. Variation was measured against the sampling characteristics. Other unexpected or emerging patterns were also noted.

Next, researchers undertook 'mapping linkage', exploring the ways that different parts of the data were connected. This was followed by 'explanation': identifying the reasons why the data fell out in the way that it did. During this stage, researchers looked for both explicit accounts (reasons given directly by participants) and implicit accounts (where researchers inferred an underlying logic based on participant views, context of the wider legal system, power dynamics). For example, an explicit account might involve a participating solicitor directly saying that, at their firm, solicitors chose to do all legal aid advocacy themselves rather than instructing a barrister, in order to keep the fee for advocacy in-house.

Whereas, with implicit accounts, it could be that most participating solicitors have said that their firms try not to instruct barristers in order to keep advocacy earnings in-house. In this case, we could say that our interviews provided evidence that barristers are missing out on some potential advocacy work because participating solicitors were financially motivated to perform advocacy work themselves.

Finally, the project Director led analysis sessions, synthesising all analysis, and developing researcher understanding of the findings and implications.

### 3.4 Ethics

The study did not require approval from any ethical board, given the scope, scale and audience for primary data collection. As part of the commissioning process MoJ secured approval for the research from RoCLA.

All participants received an information note that included reassurances that their data and views would be accessible by members of the IFF research team only and reported in such a way that they would not be identifiable, and their data would be kept securely by IFF in accordance with GDPR requirements.

Ethical considerations during fieldwork included maintaining the confidentiality of participants, upholding the principle of informed consent, and letting participants know their rights in terms of data security and the right to withdraw from the research at any time. Verbal consent to take part in the interview was obtained during the screening call and consent to have the interview recorded was taken at the beginning of the interview, after which the participant would be informed by the interviewer that they had started the recording.

Due to the subject matter and participant profile, interviews were unlikely to cover challenging topics or threaten the wellbeing of participants. However, interviewers were aware of the procedures required if participants did become distressed. These may involve allowing participants to pause or stop the interview at any point and passing on any disclosures of harm or safeguarding concerns to an appropriate authority within the research team, who would then report to the concern to police if necessary.

### 3.5 Research considerations and limitations

The research conducted was qualitative and therefore is not intended to imply prevalence among the wider population but rather illustrate the range of experiences and views of participating advocates and instructing solicitors currently working in the civil legal aid sector. The evidence collected is qualitative and therefore the report will not include any percentages, or quantitative figures to describe the evidence or findings from the interviews. However, terms such as 'more common', 'less common', 'recurring view', 'often', 'unique', 'rare' or 'few' are used throughout to give a sense of the scale of a sentiment among those interviewed for this research.

All views shared in this report were based on the direct experiences and perceptions of the advocates and instructing solicitors interviewed.

Qualitative interviews may be subject to cognitive biases that can influence findings (such as selection, satisfaction, and social desirability biases). However, qualitative methodological guidance recommends 20–30 interviews as usually sufficient to analyse the phenomenon of interest before risking data saturation.<sup>3</sup> Therefore, with a sample size of 40 diverse civil legal aid advocates readers can be reasonably confident that participant consensus on a topic is likely to be a fair reflection of the population of civil legal aid advocates.

### 3.6 Terminology and glossary

To aid with understanding of legal sector language, see Appendix A for a glossary. Where the report uses the term “participants”, this refers to the research participants generally. Terms such as “participating solicitors”, “participating barristers” and “participating instructing solicitors” are used when exploring findings specific to those subgroups.

### 3.7 About this report

Chapter 4 discusses the research findings. The following is discussed:

- Participant perceptions of the context in which civil legal aid professionals are operating, including recent sector changes, the influence of LASPO and the impact of COVID-19 and digitisation.
- The shape of a civil legal aid career, participant motivations for going into civil legal aid, and the barriers that they have faced.
- The processes for taking on civil legal aid cases and assigning advocates in them.
- Participant views on the sustainability of the civil legal aid sector.
- Participants suggestions for improving civil legal aid advocacy.

Chapter 5 summarises the research findings by the research questions.

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<sup>3</sup> Marshall, B., e al (2013) '[Does Sample Size Matter in Qualitative Research? A Review of Qualitative Interviews in IS Research](#)', *Journal of Computer Information Systems*, 54(1), 11–22; Mason, M. (2010) 'Sample Size and Saturation in PhD Studies Using Qualitative Interviews', *Forum Qualitative Social Research*, 8(3).

## 4. Findings

### 4.1 The context in which civil legal aid advocates operate

This chapter sets out the context in which civil legal aid advocates are carrying out their work. It begins with an overview of the challenges that were most frequently reported, specifically bureaucracy, pay rates, and the pay system. The impact of LASPO, COVID-19, and the accompanying digitisation is then explored. The chapter concludes with a brief account of the impact of Government policy on civil legal aid.

#### **Perceptions of the civil legal aid operating context**

Advocates operate in a complex, changing system, and legal system developments and policy changes underpinned our participants experiences.

#### *Bureaucracy*

All participants raised the trend towards increased bureaucracy and administrative work related to civil legal aid. Not only is there a widespread perception that the amount of bureaucracy and administrative work has increased, but that this type of work has also become more complex due to changes in the legal aid sector – in particular navigating the fixed rates system, which is discussed later in this chapter. There was an indication from some participants that they believed this trend was due to the changes made by LASPO.

“We found use of Client and Cost Management System (CCMS)... has become much more complicated. Much more paper heavy and much more bureaucratic and harder to navigate. So, that means firms and counsel are less likely to take on those cases because you’re not going to get paid or it’s so much bureaucracy you’re not going to get paid for.”

**Solicitor, Immigration & Asylum law, England**

This increase in bureaucracy and administrative work was viewed as problematic by all participants because it is unpaid, despite being a requirement to carry out civil legal aid work. It was also seen as adding to already pressed workloads. Participants were

particularly concerned that it was taking time away from other work, including working with clients and preparation for advocacy.

Participating instructing solicitors felt the requirements at the beginning of a case to apply for and secure civil legal aid for a client can be complex and time consuming, and that LAA decisions were often delayed. Where delays were experienced and without confirmation of reimbursement for their time, participating instructing solicitors were unable to start working for a client. An instructing solicitor reported that their firm navigated this by sometimes charging a small nominal fee to their client that allowed them to begin work, while another said that they accepted the risk and started work before the civil legal aid application was approved.

The requirements for claimants to provide evidence of their need for civil legal aid presented additional demands for participating solicitors working in family and mental health law. Specifically, this related to the requirements for claimants to provide specific forms of evidence of their need, as prescribed by MoJ. The nature of the claimants' needs and personal situation often mean that they are in a vulnerable and time sensitive state, and such evidence can be difficult and time consuming to secure. For example, in family law, a survivor of domestic abuse was required to provide a police letter, a doctor's letter, or a letter from a refuge, among other forms of acceptable evidence.

“We require evidence of domestic abuse for somebody to even get through the door to discuss legal aid eligibility. And it's not simply evidence, it's evidence as prescribed by the Ministry of Justice. So, you have to have a letter that conforms with their requirements. And if you don't have a professional who is willing to sign that letter or to provide proof, let's say the police have prosecuted your ex for very, very serious assaults, but they can't be bothered to put it in writing... You don't get legal aid.” **Solicitor, Family law, England**

A less common issue raised by participating instructing solicitors related to the Key Performance Indicators (KPIs) they were required to meet. KPIs for legal aid firms are set out in the LAA's 'Standard Civil Contract Specification', of which the most recent version

was published in 2018 and contains seven criteria that legal aid firms must meet.<sup>4</sup> While there was a broad acceptance that regulation and minimum standards were important, the balance of opinion towards the KPIs was that they were burdensome and that any errors were punished harshly. One example cited by two participants (one a solicitor and one a cost lawyer) was a KPI relating to counsel submitting their bills at the same time as solicitors, who are themselves punished if this does not happen. This was felt to be unfair.

“We’ve got to have our regulation, we’ve got to have standards, I think that’s really important. But the KPIs are a bit punitive. It just feels a bit unfair at times.” **Solicitor, Family law, England**

### *Pay rates*

All participants felt civil legal aid pay rates were too low for the type and volume of work they carried out. Those practising before LASPO was introduced in 2012 felt the resulting reduction in fee rates as the defining moment in what they saw as the decline of the legal aid sector. Since then, rates have not increased, which constitutes a further real terms reduction when taking inflation into account.

The pay was considered too low to make a ‘good living’ from solely civil legal aid work compared to privately funded work. Because of this, it was common for participants to state that they had witnessed colleagues and peers leaving the civil legal aid sector when they were deciding to start a family or purchase a property.

“If you are young and you hope to get yourself on the property ladder, social welfare law is not going to pay you enough to do it. We are finding retention of staff difficult.” **Solicitor, Immigration & Asylum law, England**

Participating barristers, both early career and those with many years of experience, expressed particular concern about low pay and regularity of pay. They expressed concern that their junior colleagues, in particular, would struggle to make a living during their first few years working because they were building up their practice and found it difficult to

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<sup>4</sup> Legal Aid Agency (2018). *2018 Standard Civil Contract Specification*. [online] Available at: [https://assets.publishing.service.gov.uk/media/65421036d36c910012935b55/2018\\_Standard\\_Civil\\_Contract\\_General\\_Specification.pdf](https://assets.publishing.service.gov.uk/media/65421036d36c910012935b55/2018_Standard_Civil_Contract_General_Specification.pdf) [Accessed 1 Feb. 2024].

secure well paid work. One experienced participating barrister even speculated that they would make no money at all during their first few years practising. These participating barristers felt only individuals with independent financial means could sustain a career as a barrister in civil legal aid. It was also noted by a few that the impacts of low pay are further exacerbated for newly qualified barristers, and solicitors, due to the amount of student debt they will have accumulated.

“Now, most people who qualify as a barrister or solicitor are coming out of college with upwards of £40,000 worth of debt. So, even assuming they get tutelage – which is tough – they can’t earn any money for the first six months. Unless you’ve got somebody behind you to support you for the first three, possibly five, years of practice you’re going to struggle.”

**Barrister, Family law, England**

It was common for participating solicitors to say that legal aid fees were not enough for firms to turn a healthy profit from civil legal aid work alone. This leads to them taking on more privately funded work and reducing the amount of legal aid funded work they take on.

“It is not possible to be a solely legal aid practice now. That is not a financially sustainable thing.”

**Barrister, Immigration & Asylum law, England and Wales**

### *The fixed fee system*

All participants shared the view that the civil legal aid fixed-fee system did not reflect the work carried out by advocates and was too complex and thus led to further burden and delays to payment. The fixed fee system is based on ‘day rates’ and ‘event rates’.<sup>5</sup>

Participants considered this inadequate because it does not cover the amount of administrative and preparation work required for civil legal aid cases. Both participating solicitors and barristers reported carrying out a lot of work for which they cannot charge a fee. Participants who had worked in civil legal aid prior to the introduction of these rates,

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<sup>5</sup> Participants seemed to reference both ‘day rates’ and ‘event rates’ interchangeably. ‘Day rates’ are paid based on the number of days a case spends being presented in court.

preferred the previous system, in which they were paid hourly rates, because it covered administrative and preparation work.

“When I first started in practice in a family case, you wrote down the times you’d spent reading the papers, the times that you spent travelling, the time that you spent at court... You wrote that down and the number of hours and you got paid on an hourly rate. Now, we don’t get paid for reading the papers. I’ve spent all morning reading papers for a case I’m doing tomorrow. I will only get paid for the time that I’m at court tomorrow.”

**Barrister, Family law, England**

All participants felt the fixed fee system was overly complex due to the number of fixed fees that different types of work could attract. This made navigating the fee system difficult, further contributing to the amount of administrative work and likelihood of errors and delays in payment.

“They’ve brought all these fixed fees in, and they just don’t work. They make it so complicated to get the right bills submitted for payment.”

**Costs lawyer, England**

There were also issues with payment delays and the length of time it could take to get paid or getting the ‘right’ amount after submitting the case bill. Participants reported that the LAA could take a while to make payments, after a case had concluded. One participating barrister also felt that solicitors can sometimes cause delays by not passing on the fee quickly enough after the LAA has made payment. This was particularly problematic for participating barristers that were self-employed, who often reported that they had experience of waiting many months and even years to receive a payment.

“The bigger cases take ages to be paid, which is terrible. I’ve had a legal aid case where I had to wait about 5 years to be paid £35,000. Nobody can afford to do work unless they’re paid regularly.”

**Barrister, Family law, England**



All participants felt that there were unfair and unexplainable disparities in fees, and fees which were so low that they disincentivised advocates from carrying out specific tasks. For example, one participating solicitor expressed frustration that they could be paid less than a barrister for carrying out very similar types of advocacy work.

### **Impact of LASPO**

All participants interviewed felt LASPO negatively impacted the civil legal aid sector because it removed financial support for many case types and made it harder for individuals to qualify for support. This, in turn, was felt to reduce the ability of individuals to get their case taken on by a legal advocate or advisor. This was seen by participants as having two main impacts:

- In some cases, having access to legal advice at an early stage would have stopped the case going to court. Instead, there was an increase in applications to court and cases that should not have taken up a court's space and time doing so.
- There were more litigants in person due to the reduced access to legal advocates. This meant court proceedings more often took longer and were complex and difficult for judges, as the litigants in person were unfamiliar with court processes and how to present their cases properly.

Participants believed both these issues ultimately had a negative impact on the overall efficiency and effectiveness of court proceedings. Participants viewed LASPO as a 'false economy' because they believed these consequences outweighed any cost savings which were perceived to be the primary aim of the legislation.

### *Case types and eligibility*

Participants felt LASPO removed financial support for too many case types that previously qualified for civil legal aid funding, and they felt this reduced access to justice for these claimants.

"LASPO has seen more individuals who have had the right to access to justice denied because they have restricted so much of the areas that used to be legally aided." **Solicitor, Immigration & Asylum law, England**

While participants felt that the removal of civil legal aid funding impacted cases in family, mental health, asylum, and housing law, participants working in family law commonly shared the view that it is now very unlikely for family cases in particular to be legally aided, other than in domestic abuse cases or if a child needs to be represented.

Participating solicitors across the different categories of law shared that, since LASPO, financial thresholds for individuals to be eligible for civil legal aid had not risen in line with inflation or state benefits. For example, pensions and Universal Credit had increased over time, but financial thresholds for civil legal aid had remained static. This meant individuals who previously would have qualified for civil legal aid no longer do. As with the removal of financial support for case types, this was felt to have negative implications on individuals' abilities to obtain legal advice and support.

#### *Litigants in person*

Both participating solicitors and barristers linked the removal of financial support for some case types and static financial eligibility thresholds with an increase in the number of litigants in person taking cases to court. The reason for this was that individuals who previously would have received civil legal aid funded advocacy, or who would have received legal advice and support to settle a case outside of court, were no longer receiving this.

The perception of an increase in litigants in person was felt to reduce the capacity of the court system. It was felt that litigants in person were more likely to take a case to court that they had little chance of winning or which would be damaging to the parties involved, and they required more support from judges and advocates during proceedings. Participants felt this contributed to case backlogs and delays experienced in some law types.

“Either that you’ve got one person who’s unrepresented and you’ve got one person who’s got a solicitor. Or worst-case scenario from the court’s point of view, you’ve got both people who are litigants in person, and all you get is the judge trying to work out what on Earth’s going on and what on Earth we’re going to do with the case.” **Solicitor, Family law, England**

Both participating solicitors and barristers commonly felt that if more individuals were eligible to receive civil legal aid funded advice at the earliest stages of their case, then there would be fewer litigants in person and fewer cases going to court overall.

Perpetrators of domestic abuse litigating in person was felt to have a damaging impact upon survivors of domestic abuse. Participants mentioned that their ability to speak directly to the court could lead to them making inappropriate statements to the court. As discussed above, they were more likely to end up in court, as the case was less likely to be able to be settled out of court. One participating solicitor described this as another form of ‘abuse’ that a perpetrator could inflict upon a survivor by ‘dragging’ them through the courts.

### **Impact of COVID-19 and digitisation**

The wellbeing and social and economic changes triggered by the COVID-19 pandemic had far-reaching impacts on individuals and organisations. The COVID-19 pandemic also resulted in a radical and swift transition to the widespread use of remote hearings – where some or all participants attend by video or audio rather than in-person to ensure justice continued to be served.

Participants felt these changes impacted: the personal and legal needs of civil legal aid clients; the capacity, capabilities and wellbeing of civil legal aid practitioners; and the capacity and effectiveness of the civil legal aid advocacy and hearing systems.

### *Clients*

The pandemic negatively impacted the personal and legal needs of civil legal aid clients.

Clients’ needs were more complex, especially for law categories involving vulnerable people, such as mental health and capacity, housing, family, and immigration and asylum.

“You might have an autistic person with a routine which was affected, and now they’re a completely different person. Cases become much more complicated.” **Solicitor, Mental Health law, England**

The use of remote hearings was viewed by some participants as limiting the quality and amount of advocacy clients received, where clients had low digital literacy, limited access to devices, and poor internet access.

“I think that the ongoing desire to have hearings remotely is one that can be very damaging for the wrong clients. Their ability to engage in proceedings is so restricted by having to do it on a device. Lots of my clients have no device other than a mobile phone. And they certainly don’t have two devices so that they can be on a device to join a hearing and have a device to look at any paperwork required for the hearing.”

**Solicitor, Family law, England**

Participants from different categories of law reported differences in practices across law types and case types on whether remote hearings were optional. A small number of participants reported examples of practices which may not have been in the clients’ best interest. For example, an advocate choosing a remote hearing because of ease and efficiency, regardless of clients’ requests for a face-to-face hearing.

“I think that you can’t get away from the gravitas of the court in family work. And so, you need people to be able to still go to court and have to stand up and be in the courtroom with the judge and have that to impact on people’s understanding of the importance of the decisions that have been made.” **Solicitor, Family law, England**

There are also data protection risks, especially for people on low income who may be required to use internet cafes to access and print legal documents.

“For the clients it’s made it harder if they don’t have the technology in order to have that interface. So, if they don’t have a smartphone or they don’t have the money... then asking them to sign the legal aid funding forms by technology doesn’t work. Clients have to go to an internet cafe or try and get a support worker or someone to print off those documents for them, sign them, scan them back to us. But then that has issues about data protection....”

**Solicitor, Immigration & Asylum law, England**

### *Participants*

Participants' case composition and working practices benefited from some changes brought about by the pandemic.

The move to remote hearings changed advocates' case composition and working practices. For example, some advocates could increase earnings because they were not losing time travelling and increase the number of cases worked because they were not restricted by geography. It also better enabled practitioners to take instruction remotely and enabled easier and better access to some clients through virtual meetings.

"They do make it easier to represent clients. I could do a case in Manchester in the morning and a case in Canterbury in the afternoon."

**Solicitor, Family law, England**

Flexibility enabled by digitisation of the legal system and use of remote hearings benefited certain groups of advocates. For example, part-time advocates, advocates returning from parental leave, and disabled advocates.

The Courts and the LAA were viewed as more flexible in acceptable practices. For example, they understood documents cannot always be signed in person, such as the legal aid form, applying for payments on account was allowed and there was an increased acceptance of electronic files and signatures.

"We used to have to send all our files in paper format to the senior courts costs office and they would then look over our bills and decide how much to pay, but now the Legal Aid Agency deal with them and we upload them electronically so, obviously, that takes us way less time because our case management is electronic, and it saves the trees and saves postage."

**Solicitor, Mental Capacity, Wales**

Participants felt remote hearings enabled more efficient and effective justice for short hearings where clients had access to multiple devices and good internet connection, and for cases involving only directions and case management.

In contrast, participants' case composition, working practices, and wellbeing were negatively impacted by the pandemic. All participants reported increased case complexity due to the effects of the pandemic on their clients, which generally implied more work overall and therefore worse remuneration.

The introduction of remote hearings changed the composition of the participants' day, leading to more screen time and cognitive fatigue.

“Being online all day is exhausting. It just means you have more work as you have things slotted into your travel time.”

**Solicitor, Mental Health law, Wales**

The pandemic also prompted more home-based work. That coupled with ‘the impoverishment’ of the civil legal aid advocacy sector contributed to the sense of loss of a community of civil legal aid advocacy practitioners, which reduced opportunities for sharing expertise.

“It is particularly acute for people who work in these legal aid areas because we are suffering from a kind of blow to our sense of having a community of practitioners ... As a result of COVID, because people have become much more home based, things are much more fragmented ... There is a real need within the social welfare areas to kind of build up these sort of communities of lawyers who work in these areas.”

**Barrister, Community Care, England and Wales**

### *Civil legal aid and court systems*

The civil legal aid and court systems were also negatively impacted by the pandemic. The court system became overwhelmed, and this led to a backlog of cases, which some participants felt continues to this day, and to difficulty listing hearings.

Listing practices varied by law category. Participants felt some courts had reverted to the pre-pandemic listing practices, listing all cases in the morning so advocates do not know when in the day their case will be heard.

Societal changes in working culture towards more flexible, hybrid working was felt by participants to contribute to civil legal aid advocacy staff retention challenges. Some firms reported challenges because staff now expect hybrid working arrangements while firms prefer office-based working and some legal aid contracts require in-person delivery.

“People will not work for a firm which enforces a more office-based approach.” **Solicitor, Mental Health law, England and Wales**

### Impact of other government policy

- Participants from the different categories of law discussed the impact of government policy on their ways of working within civil legal aid advocacy. Examples from housing and immigration and asylum cases are illustrative of a dynamic and changing environment in which advocates operate.
- Participants working in Housing law were impacted by the government policy to pause all evictions during COVID-19 pandemic lockdowns, as this led to a decrease in the overall amount of work available in this area of law at this time. Participants working in Housing law reported that this led to some solicitors and barristers deciding to stop practising in that area of law.
- Participants mentioned that the volume and type of work for legal professionals working in immigration and asylum had been impacted by Home Office policies, particularly those that made cases more complex or extensive. For example, a participating barrister explained the decision to create a safe list of countries meant that it was difficult to find representation for cases relating to countries on this list (such as Albania) because such cases are now hard to win as they require more evidence. Collecting this evidence involves more unremunerated administrative work for solicitors and barristers involved in the case.

## 4.2 Process for taking on civil legal aid work and appointing advocates

This chapter explores the processes of taking on civil legal aid work and appointing advocates. It begins with a brief summary of who carries out civil legal aid advocacy, before looking at the decision-making process when taking on civil legal aid cases and the

factors influencing these decisions. The chapter concludes with suggestions from participants for improving their ability to take on civil legal aid work and appoint advocates.

### **Who carries out civil legal aid advocacy**

Barristers are the main type of legal professional who carry out civil legal aid advocacy, as the role of a barrister is to provide in-court representation for appellants. However, solicitors and chartered legal executives can – and often do – advocate in lower courts<sup>6</sup> where they have the necessary rights of audience.

Most of the participants we spoke to were either splitting their time equally between civil legal aid cases and privately funded cases or slightly more of their time was spent on civil legal aid cases. Only a small proportion of participants were exclusively working on civil legal aid work. Over time, the proportion of participants' cases funded through civil legal aid had mainly either stayed consistent or reduced – only a few reported that it had increased. A consistent theme was that firms had cut civil legal aid workloads and increased the proportion of privately funded work to maintain a profit.

### **Taking on civil legal aid work**

A reoccurring view among all participants – but particularly common amongst participating solicitors – was that they would aim to take on as many civil legal aid cases as they thought viable. It was rare that they or their firms declined cases due to personal preference.

“We will accept literally anything that falls within the scope of the legal aid contract [...] we will take everything. Generally, we don't gate-keep or cherry-pick or take any particular types of cases because somehow, some way, we find the capacity to deal with most cases.”

**Solicitor, Housing law, England**

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<sup>6</sup> Civil cases are mainly dealt with by county courts and typically relate to debt (these generally being issued for a specified amount of money), the repossession of property, personal injury (these generally being issued for an unspecified amount of money), the return of goods and insolvency. Particularly important, complex or substantial cases are instead dealt with in the High Court. [Courts, tribunals and appeals - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/topics/courts-tribunals-and-appeals)



Where participants or their firms did turn down cases, this was for three reasons: lack of capacity, expertise, and/or financial viability.

Participants reported that the overall supply of civil legal aid professionals was falling. Consequently, professionals and firms found themselves strained for capacity and felt forced to turn down civil legal aid cases as a result. This issue appeared to be particularly acute for participants working in Wales, the South West and the Midlands.

Participants also declined civil legal aid work when they felt they lacked sufficient experience and expertise with the case type. Due to the diverse nature of civil legal aid work and the fact that many clients are in vulnerable circumstances, participants declined certain cases on the basis that they did not think they could offer sufficient quality of legal advice and/or representation. This was more commonly reported by participants with less than 10 years' experience.

“We risk assess whether to agree to act for the person, and that involves assessing whether we think we’ve got the expertise, whether we think we can help them...” **Barrister, Community Care, England**

The third reason that participants rejected civil legal aid work was that they or their firms deemed the case to be financially untenable. Given the fixed fee pay structure, civil legal aid professionals were able to forecast when certain cases would simply require too much work to be profitable.

“Fixed fee work, it’s not profitable...£744 for the beginning of the case to finishing the advocacy and advising on appeal. If we’re going to do a reasonable standard of work, we can’t do that within £744.”

**Solicitor, Mental Health law, England**

Participating barristers also referred to the ‘cab rank rule’ in their decisions to take on a civil legal aid case. This rule was issued by the Ethics Committee of the Bar Council,

obliging barristers to accept instruction whenever they are able to, and to not withhold their services when they have the experience, knowledge and capacity to take on a case.<sup>7</sup>

“If someone brings a case to me and I’m professionally capable of doing it and I’ve got enough time to do it, then I’m obliged to it. I don’t turn down legal aid work. I think it’s treated the same as private client work and I don’t think you’ll find a barrister in the country who will tell you any differently.” **Barrister, Housing law, England and Wales**

### Selecting an advocate for a case

Once participating solicitors took on a civil legal aid case and were given a hearing date, they then decided whether they would advocate themselves or instruct counsel. In the latter instance, participating solicitors contacted chamber clerks or contacted barristers they had worked with before. If they contacted chamber clerks, the clerks then either assigned barristers to the case themselves or asked around the chambers for barristers to offer their services.

Participating solicitors made decisions on whether to appoint a barrister, advocate themselves or allocate the case to a colleague within the firm based on the following three factors:

#### 1. Financial factors

Participating solicitors often expressed a preference to keep advocacy ‘in-house’ so that they or their firm claimed the advocacy fees, making the case financially viable.

“A lot of this is down to cost. We try and keep as much in-house as we can because the moment we outsource it anywhere we’re losing money. As a small legal aid firm, we can’t afford to do it.”

**Solicitor, Mental Health law, England**

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<sup>7</sup> The Ethics Committee (2021). Refusal of Work by Members of the Bar on Grounds relating to the Adequacy of Fees, including Legal Aid Fees. The Bar Council.

## 2. Complexity of case and hearings

Participating solicitors often reported that for complex cases and later hearings, they were more likely to appoint barristers due to their professional skillset in court representation. The length of a hearing was also a factor. When participating solicitors expected a hearing to extend over multiple days, they were more likely to appoint a barrister so that they could work on other cases.

“So, what you tend to have solicitors doing in terms of advocacy is the bits that aren’t finding-of-fact or final hearings. [In] contested hearings, that’s where barristers really are, [because they] are trained to do contested hearings. We solicitors do them with experience, but [for] barristers that’s their bread and butter, so solicitors will do a lot more of those little bits of advocacy.” **Solicitor, Family law, England**

Participating solicitors with less than 10 years’ experience were more likely to lack confidence in certain cases and so appoint barristers more often:

“I wouldn’t feel comfortable covering as an advocate in a hearing which required extensive cross examination of witnesses [because] it’s not something I have any training in ... I would be better serving my client’s interest by getting counsel.” **Solicitor, Housing law, England**

## 3. Client and case needs

Participants felt an advocate’s personality and empathy were very important, especially with vulnerable clients. This was a reason both for and against a solicitor advocating themselves, depending on whether the solicitor felt it was in the client’s best interests. Some clients disliked having to deal with multiple legal professionals and preferred for the solicitor to represent them. For others, a barrister’s skillset made clients more comfortable in court.

However, the nature of the case also played a role. Participating solicitors practicing mental health law were more likely than participating solicitors practicing other law types to advocate themselves, even in more complex cases. Participants working in mental health

law suggested that the nature of mental health law was such that advanced knowledge was valued more in court than pure advocacy skills, and that this knowledge typically resided in solicitors rather than barristers.

### **Shortage of advocates**

When participating solicitors had made the decision to instruct counsel, they often found themselves facing a shortage of barristers who could take on the case. Consequently, many participating solicitors reported needing to advocate themselves even when it might have been preferable to appoint a barrister. The shortage of barristers was common in three circumstances:

#### **4. If the hearing was at short notice**

The less notice participating solicitors could give a barrister's chamber of an upcoming hearing, the less likely it was that they could find a barrister with capacity.

“So, at the outset you might go to a particular chamber and ask for somebody. But really it depends. It depends how urgent it is. You might get a hearing with a week's notice. Some days there just seems to be nobody available.” **Solicitor, Mental Health law, England**

#### **5. If the hearing was in particular regions**

Participants identified Wales, the South West and areas of the Midlands as being key locations experiencing a shortage of barristers.

“[It's] quite tricky to find counsel from the sort of the London or national chambers that we would use to cover hearings here [in Coventry] ... I definitely think there's a regional factor.” **Solicitor, Housing law, England**

#### **6. If the hearing was in a particular court**

Participating solicitors reported that in lower courts, cases tended to be seen as less interesting and were generally lower-profile, and they were therefore more likely to find it difficult to appoint a barrister as the case would not be particularly attractive.

“High profile cases are the ones that are more likely to be reported, which is good for the barrister’s profile and for their chambers. I can understand that because it’s good for us as instructing solicitors too. If you have a case that is properly reported in the law journals then that is really good for our reputation, and the same goes for them.”

**Solicitor, Mental Health law, England**

Participating solicitors and barristers noted that the combination of this advocate shortage and the financial pressures on civil legal aid firms meant the proportion of solicitors undertaking advocacy themselves had increased in recent years, which they saw as a sign of the longer-term sustainability challenges within the sector. A concern was raised around the professional distinctions between solicitors and barristers becoming increasingly blurred, as traditionally the role of solicitors was to focus on the client care, statements and case preparation, and barristers would focus on the advocacy. A few participating barristers suggested that having more solicitors advocate was not necessarily positive as only barristers are trained in advocacy. However, they did note that the rights of audience helps to minimise this risk as only barristers have the rights of audience in higher courts.

“[There has been] a kind of merging of the profession. So, where there were two very separate professions, [nowadays] you see a lot more solicitors doing advocacy. And actually, I’m not sure that that’s necessarily a good thing.” **Barrister, Family law, England**

### **Next steps after appointing an advocate**

If a solicitor instructs external counsel, the next step is to ‘brief out’ the case to them. In straightforward cases this may simply involve sending the barrister written instructions and relevant documents to read. In more complex cases the solicitor might have briefed the external counsel through a series of meetings. After the briefing, there is typically a conference (in-person or online) between the instructing solicitor, barrister, and client. Before the hearing a further meeting with the opposition parties, or an advocates-only meeting may also take place. After the hearing, barristers then debrief the instructing solicitor.

Due to a shortage of barristers, sometimes the appointed advocate would not be available for all the hearings, so a new barrister might have been appointed and the briefing process would need to be repeated.

“You often find yourself having to instruct a completely new advocate which means briefing them from scratch and starting again, which increases the workloads.” **Solicitor, Mental Health law, England**

Participating solicitors who worked on immigration and asylum cases tended to be more involved during this process, sometimes acting as translator for the client or supporting their emotional welfare.

### **Differences in advocating for civil legal aid cases and private law cases**

Participants commonly felt there were limited differences in the approach or skills needed when advocating in a civil legal aid case rather than a privately funded case.

“All advocacy is about applying the law and cross-examining folks, so the only difference is how much we get paid.” **Barrister, Family law, England**

However, some participating solicitors and barristers did note that the nature of civil legal aid clients could bring additional complexities to the case which would need to be overcome to ensure the client is being represented effectively. These additional barriers and complexities were not felt to be present when representing in private law cases.

“Often, you’re dealing with particularly vulnerable clients and immigration work and people who are impoverished, people who have complex mental health, and people who don’t speak English or don’t have much fluency in English, and you may be relying on interpreters. And I think that all of that creates difficulties that you have to overcome to represent someone effectively.” **Barrister, Immigration & Asylum law, Wales**

## 4.3 Careers in civil legal aid advocacy

This chapter explores how civil legal aid advocacy arises in the careers of advocates, the point advocacy is most suitable to begin in a legal professionals' career, and barriers and motivations for working in civil legal aid advocacy.

### Starting a career in civil legal aid advocacy

Most participants started working in civil legal aid at the beginning of their career.

Participants shared three reasons for why the beginning of one's career was the best time to start working in civil legal aid. Firstly, it was seen as a natural progression from focusing on certain modules at university which would lead into specific areas of law funded through legal aid. Secondly, it would enable advocates to become familiar with the civil legal aid system at an early stage in their career. Thirdly, starting at the beginning of your career would also enable key skills to be developed, specifically the best approaches to working with vulnerable clients. This view was held by all types of participants and across all areas of law.

"You can't talk to a homeless asylum seeker in the same way you talk to the CEO of House Building Company...you need to learn this skill set of dealing with vulnerable people [...] It's very human focused, you've got to be able to work with people in quite vulnerable circumstances."

**Barrister, Housing law, England and Wales**

### Motivations for starting a career in civil legal aid advocacy

Participants were commonly motivated to work in the civil legal aid sector for the following three reasons.

First is a strong conscience to represent those in more vulnerable situations. They wanted to 'do good' and were people driven. Working in civil legal aid was aligned to their values around social justice. This desire for social justice was reported as coming from either their own lived experience or exposure to this type of work during other roles. For example, duty representation in 'lower courts', or during pupillage, for barristers.

“It’s such a horrible cliché but I wanted to do good. I knew I didn’t want to be a corporate lawyer. I wanted to work with people, and I wanted to make people’s lives better and there are not all that many areas of law that, in my view, actually do that for individuals rather than corporations.”

**Solicitor, Family law, England**

Second is an interest in a specific area of law, which more often than not happened to fall under civil legal aid. In these instances, participants did not feel they had made a ‘choice’ to work in civil legal aid; their area of interest just happened to be commonly funded through civil legal aid.

“I don’t think I was ever in a situation where it was a choice between legal aid or not. There was never that type of conversation... I was just much more interested when dealing with actual people. As opposed to doing privately funded things like property law.”

**Instructing Solicitor, Mental Health law, England**

Third is the wide range of topics covered and scope for creativity. There was a feeling that the need to do ‘creative lawyering’ is more common in civil legal aid funded cases versus private cases. The challenging context and cases encountered in civil legal aid funded work require that advocates think outside of the box to present new arguments.

“You can often be more creative when you’re doing a legal aid case than when you’re doing a private client case... If I’m doing a homelessness case for example... If I don’t win, they’re on the streets, so I’ve got to be as creative as I can be. You think of all kinds of new, and exciting arguments to run...so legal aid work, for me at least, is an opportunity to do creative lawyering.” **Barrister, Housing law, England and Wales**

### **Barriers to a career in civil legal aid advocacy**

Participating solicitors and barristers felt that working in the civil legal aid sector had a higher time investment and lower pay in comparison to privately funded work. Participants reflected that they often worked long hours and that the amount they were paid was too



low for the work they were doing. They noted the amount of work they needed to do that was unpaid was substantial, for example, preparatory reading before hearings, which would be chargeable time in privately funded work. This was felt to be the case for both participating solicitors and barristers.

Due to being self-employed and needing to build up their expertise and reputation, participating barristers appeared to face a particular issue with pay when they were first starting out. Some suggested they may earn very little or no money at all during their first couple of years practising – meaning that only those with independent financial means could realistically work as a barrister in civil legal aid.

“They can’t earn any money for the first six months [...] unless you’ve got somebody behind you to support you for the first 3, possibly 5 years of practice... it’s just not viable [...] unless you’ve got a lot of money behind you.” **Barrister, Family law, England**

As covered previously (earlier in this chapter in the context in which civil legal aid advocates operate), financial viability included issues with payment delays and the length of time it could take to get paid or getting the ‘right’ amount after submitting the case bill, particularly for barristers.

Related to financial barriers were issues around the work feeling ‘lower status’ due to the lack of profitability and firms prioritising private work.

“The underpayment is always there. It’s when paralegals are paid more at ‘magic circle’ firms. They’re paid more than I am as the head of a department. They’re not qualified at all. I run the department... but I often think to myself, why am I still doing this?”

**Solicitor, Mental Health law, England**

“Doing work involving children is in itself regarded in some professional circles as of less status.” **Solicitor, Family law, England**

A few participating solicitors noted that this prioritisation led to a feeling of uncertainty within civil legal aid teams in firms and a feeling that their department would be the most 'at risk' of redundancy.

“Ten years ago, there was a phenomenal cut back in the areas of law covered by legal aid. I had to make five solicitors redundant.”

**Barrister (previously worked as a solicitor), Family law, England**

Participants also felt civil legal aid processes and bureaucracy contributed to high time investment and heavy workload. Participants noted that having to apply to the LAA for civil legal aid funding for clients can cause significant delays in them being able to start work, as the systems are slow and inefficient. The eligibility criteria and evidence gathering can also be very time consuming and difficult to achieve.

### **Continuing a career in civil legal aid advocacy**

A recurring experience amongst participants was they observed their colleagues and peers leaving the civil legal aid sector due to concerns over work life balance and pay. This appeared to be particularly common when individuals were deciding to buy a property or start a family.

“We have lost quite a few young people. They come and train with us and once they get qualified as a solicitor and they start looking to buy a property, they start looking for other jobs which can pay more.”

**Solicitor, Immigration & Asylum law, England**

When participants were asked if they would still choose to work in the civil legal aid sector if they had the opportunity to start again, opinions were mixed. Some explicitly stated that they would not choose to work in civil legal aid, and others were unsure. This was predominantly due to hours worked, pay, and issues with the administrative systems. This is despite their strong motivation to 'do good'.

“If I was fully informed, I would not do it. And if this was my only entry into becoming a solicitor, I would choose a different career. When I first started doing legal aid, the cases that were given to me were well funded... Now, when you do cases, the same case which used to have no funding limits now has a £413 funding limit, which is impossible to run a case properly on.” **Solicitor, Immigration & Asylum law, England and Wales**

There was also evidence that some participants would discourage junior colleagues from starting a career in civil legal aid. These tended to be more senior participants with over ten years of experience and, more commonly, those working in family law.

“What I say to every single person that I train, or mentor is if you can persuade yourself to do a different area of law, go and do it.”

**Solicitor, Family law, England**

When asked what they would do instead of civil legal aid work, some stated that they would prefer to leave the legal profession altogether rather than take on corporate work. Retrospectively, a few looked back at their career with regret.

“If I knew back then what I know now, perhaps I would have remained an engineer.” **Solicitor, Immigration & Asylum law, England**

However, there was still much job satisfaction from civil legal aid advocacy that came from helping clients in vulnerable situations.

“As hard and gruelling and awful as it is sometimes, it’s the only area of law I know I would do because you are making a direct impact on the lives of vulnerable adults.” **Solicitor, Mental Health law, England and Wales**

There was also a ‘call to arms’ and sense of wanting to be part of the movement in helping to improve and sustain the civil legal aid sector.

“It’s more important than it’s ever been for people to work in resource-light sectors because if we don’t occupy these spaces the Government will erase them. We need to be in courts doing the work, working with the clients and showing the Government that these groups matter and their rights matter.” **Barrister, Immigration & Asylum law, England and Wales**

## 4.4 Perceptions about the sustainability of the civil legal aid sector

This section explores perceptions of the civil legal aid sector’s sustainability. It covers the disincentives to working in the sector, and the impacts these are perceived to have on the capacity of the sector and variations in civil legal aid coverage. The chapter concludes with participants’ views on the role of Qualified Legal Representatives.

### **Perceived reasons for the unsustainability of civil legal aid sector**

All participants viewed the current advocacy system as unsustainable and risking access to justice. The reasons for this view were the diminishing capacity of the civil legal aid sector due to an ‘ageing’ civil legal aid workforce and few opportunities for training and low pay and bureaucracy (described in previous sections).

#### *An ‘ageing’ civil legal aid workforce*

Participants described concerns about changes to the demographic profile of legal professionals working in the civil legal aid sector: that retiring advocates or individuals leaving civil legal aid advocacy early were not being replaced by advocates entering the sector.

“I’ve got 10 years or so left and legal aid is now a relatively small part of my practice. The government should be worried about who’s going to be doing this five years from now. Who’s coming in to replace me? Very few of the baby barristers in chambers want to do legal aid work.”

**Barrister, Housing law, England and Wales**

There was a widespread perception that it was becoming more difficult to recruit young advocates into the sector, and that firms and advocates were reducing the amount of civil legal aid work they were taking on. Some participants shared that their firms stopped recruiting to civil legal aid posts because of the unprofitable nature of cases and difficulty recruiting to civil legal aid positions.

“Nobody wants to do it; we can’t recruit even if we tried. And we don’t actively try and recruit because we don’t see any long-term future in legal aid.” **Barrister, Community Care, England**

#### *Few opportunities for training*

Participants had received little formal training in advocating civil legal aid cases or navigating the system. Typically, participants had built their skills and knowledge relating to civil legal aid ‘on the job’. However, on reflection, it was often acknowledged that they would have benefited from training as it would help them navigate the system and work more effectively with their peers and colleagues. This general lack of training may be further reducing the capacity of advocates in civil legal aid cases.

“[The Bar school] doesn’t have a module about legal aid, which is a shame really, because it’s a very practical thing, knowing about how the legal aid system works is very useful to how you work with the instructing solicitor. A little more knowledge about the way the legal aid system works to help us support our instructing solicitors would actually be very helpful.”

**Barrister, Community Care, England & Wales**

#### *Low pay and bureaucracy*

Participants felt fewer advocates and firms wanted to work in the civil legal aid sector because of the operating context in which they work, as set out in the previous sections in this chapter. This included the low pay and profitability of the work, particularly when compared to privately funded work; the amount of unpaid administrative work required; the complexity of the civil legal aid system; the impact of eligibility changes and concerns over access to justice being restricted; and the pressures upon advocates’ and courts’ capacity to deal with the volume of cases.

“It is not possible to be a solely legal aid practice now. That is not a financially sustainable thing.”

**Barrister, Immigration & Asylum law, England and Wales**

### **Implications of civil legal aid sector capacity challenges**

Participants shared three main implications of the capacity challenges described above:

- **Inconsistent geographic coverage in civil legal aid availability**  
In South West England, Wales (as a whole, but North Wales in particular) and parts of the Midlands.
- **Inconsistent civil legal aid availability by category of law**  
Immigration and asylum and family law were felt by participants to be particularly difficult for claimants to gain civil legal aid funded representation in. In immigration and asylum, fewer participating solicitors' firms are willing to take on this type of work due to perceived case complexity and low likelihood of reaching a successful conclusion for the client. In family law, many case types became ineligible with LASPO and the nature of the cases often require multiple firms of solicitors to represent the different parties, which can lead to firms needing to declare a conflict of interest and being unable to work on a case.
- **Increased pressure on remaining advocates to meet system demands**  
The number of individuals leaving the civil legal aid sector was felt to increase the pressure on advocates who choose to remain in the sector, as the demand for services was not reducing and therefore there were fewer advocates for the number of cases.

## **4.5 Suggestions from participants**

Participants shared suggestions on how the civil legal aid sector could be improved.

This section discusses ideas for improving sector sustainability and suggestions about communicating to the sector and for future research.

## **Improving the sustainability of the sector**

Participant's suggestions for improving the sustainability of the sector included funding and pay processes, qualifying case types and eligibility, the court systems and infrastructure, and raising the profile of civil legal aid advocacy.

### *Funding and pay processes*

Participants felt strongly that pay rates needed to be increased in line with inflation for the civil legal aid sector to be sustainable. They felt the pay disparity with non-advocacy-based work also needed to be addressed.

Participants suggested that the fixed fee system needed to be simplified, ideally by having fewer day rates, event rates, exemptions and 'anomalies', as this would help to reduce the amount of unpaid civil legal aid bureaucracy. However, they also felt the LAA should consider increasing the scope of work that is funded through the current system and widen this to include advocacy preparation work and civil legal aid case administration.

Participants with over 10 years' experience additionally suggested moving away from day and event rates entirely and returning to hourly rates. The speed at which advocates and instructing solicitors were paid through the current LAA system could also be improved, along with the level of funding available for training and accreditations.

### *Qualifying case types and eligibility*

Many participants advised that broadening the eligibility criteria, lessening the burden of evidence, increasing financial thresholds in line with inflation and state benefits and revisiting case type eligibility would improve the sustainability of the sector. It was also suggested that offering an advice line for both solicitors and public users to better determine if a case will likely be eligible for civil legal aid, would help to reduce administration workloads and enable this time to be better placed on casework.<sup>8</sup>

### *Court systems and infrastructure*

Participants felt that improvements in the consistency of resources and practice across the court system would be particularly beneficial for the sector. Improving the capacity of the

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<sup>8</sup> There is a calculator available on GOV.UK which allows individuals to check if a client qualifies for legal aid but this was not mentioned or discussed with participants – [Check if your client qualifies for legal aid | GOV.UK \(check-your-client-qualifies-for-legal-aid.service.gov.uk\)](https://www.gov.uk/check-if-your-client-qualifies-for-legal-aid)

court system to speed up hearings would benefit public users and legal professionals. Participants discussed updating and upgrading digital systems such as the Client and Cost Management System (CCMS), LAA portal, Family Public Law Portal. They felt updating these systems could improve efficiency, reduce administrative tasks, and improve the overall work life balance of civil legal aid professionals.

#### *Raising the profile of civil legal aid earlier in careers*

Participants suggested that the profile of the sector needed to be raised earlier in careers, and awareness of civil legal aid in legal education could be improved. Participants with less than 10 years' experience felt that civil legal aid could be better promoted in degree courses. Some participants indicated that they first heard about civil legal aid when they were selecting university or training modules on areas of law as some of these areas just happened to involve more civil legal aid cases. However, this did indicate that individuals who do not choose certain modules may not have much exposure to civil legal aid during their education. This therefore suggests there is currently a lack of consistency in students' exposure to legal aid.

#### **Further suggestions**

Participants also provided some broader suggestions around communications and further research.

#### *Communications*

Commonly, participants wanted improved communications on the sector; they were particularly keen to have more and clearer notifications on policy changes. They also wanted to be provided with further information on the Review of Civil Legal Aid (RoCLA) and any other future research on the civil legal aid sector.

#### *Further research*

Participants also suggested that more surveys of legal professionals and public users would help to provide the LAA and MoJ with an improved understanding of how widespread specific issues currently were in the sector.



## 5. Summary and conclusions

The Ministry of Justice (MoJ) launched the Review of Civil Legal Aid (RoCLA) in January 2023. This report is part of the Data Publications workstream of RoCLA. It sets out the findings from primary qualitative research with 40 advocates and instructing solicitors involved in civil legal aid contracts in England and Wales, carried out by IFF Research from November to December 2023. The implications of the research in relation to the research questions are summarised below.

### 1. **Who are the advocates that are not easily identified in Legal Aid Agency (LAA) data?**

This research identified the following individuals involved in facilitating or delivering civil legal aid advocacy:

- Barristers doing civil legal aid advocacy.
- Solicitors doing civil legal aid advocacy.
- Advocacy leads at third sector organisations, finding solicitors, providing legal advice but not qualified to do civil legal aid advocacy.
- Legal advisors at law clinics and community services providing simple legal advice but not qualified to do civil legal aid advocacy.
- Qualified Legal Representatives (QLRs), working with solicitors.

### 2. **What are the perceptions of different types of advocates in the civil legal aid sector?**

Most of the views and experiences discussed in the report were expressed across legal professional roles, areas of law and length of time in the industry. Differences in perceptions included:

- **Differences between participating solicitors and barristers:** All participants raised concerns about the level of pay but participating barristers expressed particular concern about low pay and regularity of pay. They were particularly concerned about young barristers and that they would struggle to make a living in their first few years of practice. A few participating instructing solicitors raised that the KPIs were burdensome and that any errors were punished too harshly.

- **Differences by law category:** Participating family and mental health law solicitors noted that they experienced difficulty when it came to the requirements for their clients to provide eligibility evidence. Participating mental health solicitors were also more likely than participating solicitors practicing other law categories to advocate themselves. Participants working in housing law had been particularly impacted by government policy around pausing evictions during COVID-19, which decreased the amount of work available and led some to stop practising in that area of law. Participants working in immigration and asylum had also been impacted by Home Office policies, which they felt had led to fewer civil legal aid solicitors being willing to take on specific cases due to the perception that they have a lower chance of successful outcome. Participating solicitors working in the immigration and asylum area of law indicated that they tended to be more involved than participating solicitors in other areas of law after they had assigned an advocate. They would sometimes act as a translator for the client or be there to provide emotional support during the process.
- **Differences by length of time in the industry:** Commonly, participants declined to take on civil legal aid work when they lacked capacity to take it on, however, participants with less than 10 years' experience also described turning down cases as they did not think they could offer sufficient quality of legal advice and/or representation. Participating solicitors with less than 10 years' experience were also more likely to instruct barristers more often as they lacked confidence in being able to advocate in certain cases. There was also evidence that some participants with over ten years' experience were discouraging junior colleagues from starting a career in civil legal aid.

### **3. What factors are important in solicitors' selection of an advocate?**

In practice, it can be difficult for some cases because of limited advocate availability. Participating solicitors choose to advocate themselves, or keep advocacy within the firm, if it is inefficient to instruct because the case is simple; client preference or wellbeing; cost; or in the case of mental health law, where expertise lies with solicitors. Enabling factors included if the hearing was further in the future; the case was high profile/interesting; and the case was unlikely to

require significant travel. Limiting factors included a lack of advocate with the specific expertise, with language skills and in the region/location; low fees; civil legal aid advocacy pay delays for barristers; and bureaucracy.

**4. How does civil legal aid advocacy work present in most advocates' careers and how is it perceived?**

Advocates were motivated to get into civil legal aid work at start of their careers because of the social value in the work and their interest in certain areas of law. A less common experience was 'falling into' the profession.

Advocates believed it was better to get into civil legal aid work at the start of a career because then individuals can develop the needed skills to speak with vulnerable clients and awareness of language/terminology in the civil legal aid sector.

**5. What incentivises and disincentivises advocates to do civil legal aid work?**

Incentives included the social value of the work and specialist skills related to the sector. Disincentives included high time investment for low pay, significant administration and bureaucracy, limited opportunities for training and the sector being seen as 'low status' in comparison to private work.

**6. How sustainable is civil legal aid advocacy felt to be by advocates?**

All participants viewed the current advocacy system as unsustainable and risking access to justice. The reasons for this view were the diminishing capacity of the civil legal aid sector capacity due to an 'ageing' civil legal aid workforce and few opportunities for training, low pay, and bureaucracy. The three main implications of these capacity challenges were inconsistent geographic coverage in civil legal aid availability; inconsistent civil legal aid availability by area of law; and increased pressure on remaining civil legal aid advocates to meet the demands of the system.

**7. What recommendations do advocates have for improvements?**

Participants shared a number of suggestions on how the civil legal aid sector could be improved. Suggestions around sustainability focused on increasing pay in line with inflation, simplifying and improving the fixed fee system to reduce the level of bureaucracy (or moving away from it) and re-examining the eligibility and evidence

requirements. Participants also noted that improving the consistency of resources and practice across the court system, improving the capacity of the court system to speed up hearings and updating and upgrading the digital systems would be beneficial and create efficiencies. They also felt that the profile and reputation of the sector needed to be improved. Participants also felt that communications within the sector on policy changes could be better and that more research to understand the currently difficulties experienced by professionals and public users would be beneficial.

**8. Is there any good practice that the introduction of LASPO removed?**

A recurring view was LASPO created a 'false economy' because it removed good practice relating to people being able to access legal advice early on in their case and having legal representation in courts and tribunals. Participants believed these barriers to accessing early advice and having an advocate led to cases reaching court when they should not have and more litigants in person, both of which participants reported cost the courts time and resource. LASPO also introduced qualification and eligibility criteria which were viewed as restrictive and introduced fixed fee rates which were viewed as insufficient for the work required in most cases.

**9. What was the impact of COVID-19 and is the sector is better or worse than before the pandemic?**

Digitisation and increase in remote hearings brought some benefits, and issues for effective advocacy to clients with complex needs, and inconsistent work practices. Social, economic and wellbeing changes triggered by COVID-19 impacted the personal and legal needs of clients; the capacity, capabilities and wellbeing of advocates; and the capacity and effectiveness of advocacy and court systems; and compounded challenges already present since the introduction of LASPO. Some participants commented on the backlog of civil legal aid cases that had built up during COVID-19 and the impact of the court system efficiencies was still being felt by participants at the time of this research. As such, it is not clear whether the sector is better or worse than before the pandemic, although, on balance, it appears to be worse.

## Appendix A

### Glossary

**Advocacy:** the process of presenting arguments, making legal submissions, and representing clients' interests in courtrooms or legal proceedings.

**Barrister:** a lawyer who represents a litigant in court proceedings, acting as an advocate for them.

**Chambers:** traditionally defined as the rooms used by barristers for meetings, document review, hearing motions, and other legal duties. Now the term is more often used to refer to the group of self-employed barristers who share the office space and clerks.

**Civil Law:** the part of the UK legal system concerned with achieving a remedy for disputes between individuals, organisations or both. This is as opposed to criminal law, which is concerned with punishing a party for a criminal offence.

**Client and Cost Management System (CCMS):** the online system operated by the Legal Aid Agency that allows solicitors, advocates, clerks and costs lawyers to manage cases, workloads, and bills.

**Counsel:** another term to describe barristers.

**Courts:** the institutions with the authority to determine the outcome of legal disputes. Civil cases will usually start in the County Court. Appeals will go to the High Court and then to the Court of Appeal – although to different divisions of those courts.

**Hearing:** the sessions in court where evidence and arguments are presented before a judge. The final hearing in a case is known as the 'trial'.

**Interim proceedings:** the hearings that take place between the first hearing and the final hearing.

**Instructing solicitor:** solicitors that provide advice and support to advocates who represent clients in court.

**Judge:** the individual that presides over court proceedings and has the authority to issue a ruling.

**Legal Aid:** government funding that can help meet the costs of legal advice, family mediation and representation in a court or tribunal. This ensures that those who cannot afford legal advice still have access to it.

**Legal Aid Agency (LAA):** an executive agency sponsored by the Ministry of Justice (MoJ) which deals with legal aid matters in England and Wales and ensures legal aid services are available to the general public.

**Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO):** the Act of Parliament aimed at reforming civil and criminal justice system, as part of a wider government policy of reducing the budget deficit.

**Litigant In Person:** a party or individual that represents themselves in civil law proceedings without the advice, instruction or representation of a lawyer.

**Means Tested Legal Aid:** involving a means test examining an applicant's income / capital to determine if they are eligible for legal aid.

**Non-barrister advocate:** this refers to advocates who represent clients in court but are not barristers.

**Paralegal:** an individual that supports lawyers with casework. Often paralegals have a law degree but do not have a practising qualification.

**Pro bono:** work a legal professional undertakes free of charge.

**Qualified Legal Representative:** an independent lawyer appointed by the court that has the rights of audience allowing them to represent a party in a hearing. They are often used to cross-examine witnesses and are not involved in the case outside of the specific hearing they are appointed to.

**Rights of Audience:** a right of a lawyer to appear and conduct proceedings in a given court on behalf of their client.

**Solicitor-advocate:** a solicitor who is additionally qualified with the “Higher Rights of Audience” that a barrister possesses, allowing them to represent in the higher courts.

**Tribunal:** a special type of court in civil law, designed to be more accessible and informal in their proceedings. Tribunals typically comprise a legally qualified Tribunal Judge and other panel members with specific areas of expertise. The tribunals system has its own structure for dealing with cases and appeals, but decisions from different chambers of the Upper Tribunal, and the Employment Appeals Tribunal, may also go to the Court of Appeal.

## Appendix B

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## Appendix C

### LASPO and KPIs summary

#### Key LASPO changes

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) was introduced in 2012. The main changes it made to the civil and family legal aid system were:<sup>9</sup>

- Replacing the Legal Services Commission (LSC) with the Legal Aid Agency (LAA), which would oversee the legal aid system.
- Changes to the scope of legal aid. Specifically, “Whereas previously a legal matter was within scope and qualified for legal aid funding unless it was specifically excluded by the *Access to Justice Act 1999*, LASPO reversed this position and listed in Schedule 1 those areas of legal problems that now remained in scope”.
- The introduction of a revised Exceptional Case Funding (ECF) scheme to provide legal aid in cases where a failure to provide legal aid would be a breach of an individual’s rights under the *Human Rights Act 1998* or European Union law.
- Applying a capital eligibility test to all legal aid applicants.
- Increasing Income Contributions for Contributory Clients.
- Capping the subject matter of dispute (SMOD) disregard at £100,000.
- Removing legal aid in cases with ‘borderline’ prospects of success.
- Reducing the fees paid to lawyers involved in civil legal proceedings, including capping or removing the uplifts for some hourly rates and limiting remuneration for pre-permission work on judicial review cases.
- Reducing rates of remuneration for experts giving testimony in civil proceedings. Rates were also limited for pre-permission work on judicial review cases.
- Curbing the fixed fees paid to lawyers. Uplift rates were also capped or removed for some hourly rates.

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<sup>9</sup> McGuinness, T. (2020). *Legal Aid: the review of LASPO Part 1*. House of Commons Library.

## Key Performance Indicators

KPIs for legal aid firms were not changed as a part of LASPO (2012). Rather, they were set out in the LAA's 'Standard Civil Contract Specification'. The most recent of these was published in 2018, which contained seven criteria that legal aid firms must meet.<sup>10</sup>

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<sup>10</sup> Legal Aid Agency (2018). *2018 Standard Civil Contract Specification*. [online] Available at: [https://assets.publishing.service.gov.uk/media/65421036d36c910012935b55/2018\\_Standard\\_Civil\\_Contract\\_General\\_Specification.pdf](https://assets.publishing.service.gov.uk/media/65421036d36c910012935b55/2018_Standard_Civil_Contract_General_Specification.pdf) [Accessed 1 Feb. 2024].

## Appendix D

### Screening questionnaire

#### Project Background

This research is part of the MoJ's Review of Civil Legal Aid (RoCLA) seeking to examine the efficiency and effectiveness of the civil legal aid system to understand how to improve its sustainability.

Advocates are legal professionals who represent clients in a court or tribunal and can include barristers, solicitor advocates, and chartered legal executives. Advocates therefore play a key role in the legal aid sector, where an inability to secure these services would damage the system's ability to deliver swift access to justice for the public. However, there is a lack of knowledge about their work and experience due to existing reporting infrastructure, where they are only partially captured within Legal Aid Agency (LAA) reporting. Specifically, the structure is such that solicitor firms are contracted by the LAA, and then these firms then instruct advocates, meaning the LAA does not have a direct relationship with advocates. Some information is reported by firms on advocates doing civil legal aid work, but in other areas, especially in immigration, mental health, and family work we have no information about who is doing this work.

The aim of this research is to understand the current experience of working in civil legal aid advocacy and how this differs between types of advocates. It also seeks to understand the place of civil legal aid work in an advocate's career and development.

This research seeks to answer:

- Who are the advocates that are currently unidentified in Legal Aid Agency (LAA) data?
- What are the perceptions of different types of advocates (barrister and non-barrister) in the civil legal aid sector?
- What factors are important in solicitors' selection of an advocate?
- How does civil legal aid advocacy work present in most advocates' careers and how is it perceived?

- What incentivises and disincentivises advocates to do civil legal aid work?
- How sustainable is civil legal aid advocacy felt to be by advocates? What recommendations do they have for improvement?

### Sample table

N=40<sup>11</sup>

#### Primary

Type	Barrister advocate	10–15
Type	Non-barrister advocate	10–15
Type	Instructing solicitor	10–15
Law category*	Family	8–12
Law category*	Immigration & asylum	8–12
Law category*	Mental health	8–12
Law category*	Other civil: housing, education etc	8–12
<b>Number</b>		<b>40</b>

#### Monitor

##### # years' experience as an advocate:

Less than year

1–5 years

6–10 years

11–20 years

21+ years

##### Employer type:

Chambers

A for-profit firm that has contracts for civil legal aid work

A not-for-profit specialist advice provider

Law centre

University law clinic

Sole practitioner

##### Location:

England

Wales

##### Firm size for non-barristers

<sup>11</sup> See appendix of *We are Legal Aid* (Denvir et al., 2022) for associated population figures.

Screener

**Ask all**

S1 Good morning / afternoon. My name is [name] and I'm calling from IFF Research. Please can I speak to [name]?

Answer	Number	Your action
Transferred	1	Continue
Requires reassurances	2	Send reassurance email
Hard appointment	3	Make appointment
Soft Appointment	4	Make appointment
Engaged	5	Call back
Refusal	6	Close
No reply / Answer phone	7	Close
Residential Number	8	Close
Dead line	9	Close

**Ask all**

S2 Good morning / afternoon, my name is [name], calling from IFF Research, an independent market research company. We're conducting research on behalf of the Ministry of Justice as part of the Review of Civil Legal Aid.

Please can I speak to [contact name]?

**If necessary:** We are looking to speak to Civil Legal Aid Advocates and solicitors instructing advocates, to understand your views and experiences of the legal aid advocacy system. This is your opportunity to have your say about the changes to Civil Legal Aid in the last decade. Your views and feedback will play a key role in helping to understand how the civil legal aid advocacy system is operating and what would help to strengthen the system.

Answer	Number	Your action
Continue	1	Continue
Referred to someone else at establishment [Write down their name] [Write down their job title]	2	Transfer and re-introduce

Answer	Number	Your action
Hard appointment	3	Make appointment
Soft appointment	4	Make appointment
Refusal	5	Thank and close
Refusal – company policy	6	Thank and close
Refusal – taken part in recent survey	7	Thank and close
Not available in deadline	8	Thank and close
Request reassurance email	9	Collect email address then continue or make appointment (see appendix for email text)

S3 **If passed to intended contact:** Good morning / afternoon, my name is [name], calling from IFF Research, an independent market research company. We’re conducting research on behalf of the Ministry of Justice as part of the Review of Civil Legal Aid.

We are looking to speak to Civil Legal Aid Advocates and solicitors with experience of instructing an advocate to understand your views and experiences of the legal aid advocacy system. This is your opportunity to have your say about the changes to Civil Legal Aid in the last decade. Your views and feedback will play a key role in helping to understand how the civil legal aid advocacy system is operating and what would help to strengthen the system.

We hope to conduct interviews between 6<sup>th</sup> November and 8<sup>th</sup> December. The interview will take around 45 to 60 minutes, depending on what you have to say, and would take place over Microsoft Teams. Alternatively, we could conduct the interview over the telephone, if you prefer.

Participation in this research is voluntary and there are no right or wrong answers. The Ministry of Justice will not know who has and has not taken part.

**Add if necessary / requires reassurance:** Please be assured that we abide by the Market Research Society (MRS) Code of Conduct and the Data Protection Act 2018. Your responses will be held confidentially in accordance with the Data Protection Act 2018.

**Add if necessary / requires reassurance:** Any personal data you provide to us will be kept until one year after the project finishes, in April 2024, and then will be destroyed. Your data will not be shared with any other organisations. You can ask us for a copy of the information we hold on you, and you can also ask for your information to be deleted if you change your mind about taking part and let us know before January 2024. You can do this by emailing [legalaidstudy@iffresearch.com](mailto:legalaidstudy@iffresearch.com), or by phoning 020 7250 3035.

You can also contact the Ministry of Justice by emailing [rocla@justice.gov.uk](mailto:rocla@justice.gov.uk) to verify this is a genuine research project or find out more.

You can also visit IFF Research’s GDPR page for more information:

<http://www.iffresearch.com/iff-research-gdpr-policy/>

Based on this information, would you be happy to take part in an interview?

Answer	Number	Your action
Yes	1	Continue to A1
Wants more information/reassurance	2	Give reassurances
Refusal [Please probe for reasons, then write in answer]	3	Thank and close
Not available in deadline	4	If available in mop-up fieldwork week, 11th–15th December, please book an interview for then.
Not available in deadline or mop-up week	5	Thank and close

**If willing to take part (S3=1)**

That’s great. Thank you, we really appreciate you agreeing to take part. Before we arrange a date and time for the interview, I need to ask you a few questions to get some more information about you and your work. This will only take a couple of minutes.

First, which of these best describes your current role?

**Read out**

Answer	Number	Your action
Instructing solicitor, also practising legal aid advocacy	1	Write in answer
Instructing solicitor, not practising legal aid advocacy	2	Write in answer
Solicitor practising legal aid advocacy	3	Write in answer
Barrister practising legal aid advocacy	4	Write in answer
None, specify	5	Write in answer
Do not know	7	Write in answer

**Ask all**

A2 What areas of civil law do you specialise in?

**Read out**

Answer	Number	Your action
Family	1	Write in answer
Immigration & asylum	2	Write in answer
Mental health	3	Write in answer
Other civil: housing, education, etc please specify	4	Write in answer

**Ask all**

A3 How long have you been working in civil legal aid advocacy?

**Read out**

Answer	Number	Your action
Less than a year	1	Write in answer
1–5 years	2	Write in answer
6–10 years	3	Write in answer
11–20 years	4	Write in answer
21+ years	5	Write in answer
Don't know	6	Write in answer



**Ask all**

A4 Which of the following best describes your legal organisation?

**Read out**

Answer	Number	Your action
Chambers	1	Write in answer
A for-profit firm that has contracts for legal aid work	2	Write in answer
A not-for-profit specialist advice provider	3	Write in answer
Law centre	4	Write in answer
University law clinic	5	Write in answer
Sole practitioner	6	Write in answer
None of these [PLEASE SPECIFY]	7	Write in answer

**Ask if non-barrister (A1=1–3) and not sole practitioner (A4=2–5)**

A5 How many staff are employed at your legal organisation? A rough approximation is fine.

**Read out if necessary**

Answer	Number	Your action
0–10	1	Write in answer
11–20	2	Write in answer
21–40	3	Write in answer
41+	4	Write in answer
Do not know	5	Write in answer

**Ask all**

A6 Do you currently practice in England or Wales?

Answer	Number	Your action
England	1	Write in answer
Wales	2	Write in answer

**If practices in England (A6 = 1)**

A7 Which English region do you tend to practice in?

**Read out if necessary**

Answer	Number	Your action
North East England	1	Write in answer
North West England	2	Write in answer
Yorkshire and the Humber	3	Write in answer
East Midlands	4	Write in answer
West Midlands	5	Write in answer
East of England	6	Write in answer
South East England	7	Write in answer
London	8	Write in answer
South West England	9	Write in answer
I practice in multiple regions [please specify]	10	Write in answer

**If practices in Wales (A6 = 2)**

A8 Which Welsh region do you tend to practice in?

**Read out if necessary**

Answer	Number	Your action
North Wales	1	Write in answer
Mid Wales	2	Write in answer
South West Wales	3	Write in answer
South East Wales	4	Write in answer
I practice in multiple regions [please specify]	5	Write in answer

**Ask all**

A9 Have you always practiced in this region?

**Do not read out**

Answer	Number	Your action
Yes	1	Write in answer
No	2	Write in answer
Don't know	3	Write in answer

**If have practiced in another region (A8 = 2)**

A10 Where else have you practiced?

**Read out if necessary**

**NB This is to identify participants who have experience of both the English and Welsh system.**

Answer	Number	Your action
England	1	Write in answer
Wales	2	Write in answer
Other [please specify]	3	Write in answer

**Ask all**

A11 Thank you for answering those questions. To remind you, interviews are taking place on Teams or on the telephone between 6<sup>th</sup> November and 8<sup>th</sup> December. When would be best for an interviewer to speak with you during this time? We can be very flexible to find a time that works for you.

**Recruiter: please check availability of interviewer before proceeding**

Question	Your action
Date	Write in answer
Time (Record in 24 hour)	Write in answer
Format preferred (Teams, telephone)	Write in answer

**Ask all**

A12 Just in case the interviewers are unable to make that date, are there any other dates that would be convenient?

Question	Number	Your action
Other suitable dates	N/A	Write in answer
No other convenient time	1	Continue

**Ask all**

A13 Thank you very much. To confirm, one of IFF’s researchers will be having a follow-up conversation with you on [date] at [time].

Could I please check if this is the best email address and/or phone number to use for contacting you:

**Add if necessary:** We only use your email address to send over details of your appointment. It will not be used for any other purposes or shared with any third parties.

**Add if necessary:** If you need to contact us at all, please reply to the email we’ll be sending to you, to confirm the date and time of our interview.

Question	Number	Your action
[Pull email address from sample]	N/A	Write in answer if incorrect
Email address correct	1	Continue

**Ask all**

A14 [If we have number in the sample] And would this be the best telephone number to reach you on:

[If we do not have their number in the sample] Could you tell me the best number to reach you on?

Question	Number	Your action
[Pull phone number sample]	N/A	Write in if incorrect/if we do not have number in sample
Phone number correct	1	Continue

**Ask all**

A15 Great, thank you. Finally, it is important we capture a range of views and experiences in this research. Would you be willing to share an invitation to this research with your colleagues or peers working in legal aid advocacy?

Answer	Number	Your action
Yes	1	Send participant the information leaflet and ask them to forward it on to their colleagues, who can then opt in
No	2	Write in answer
Don't know	3	Write in answer

**Ask all**

A16 Thank so much for your time today. We very much look forward to speaking with you further.

**Reassurances to use if necessary**

The interview will take between 45 and 60 minutes to complete.

Please note that all data will be reported in aggregate form and your answers will not be reported to our client in any way that would allow you to be identified.

If respondent wishes to confirm validity of survey or get more information about aims and objectives, they can call:

**MRS:** Market Research Society on 0500396999

**IFF:** 0207 250 3035

**Email MoJ:** [rocla@justice.gov.uk](mailto:rocla@justice.gov.uk)

## Appendix E

### Topic guide

#### A Project background and principles

##### Project Background

This research is part of the MoJ's Review of Civil Legal Aid (RoCLA) which is seeking to examine the efficiency and effectiveness of the civil legal aid system to understand how to improve its sustainability.

Advocates are legal professionals who represent clients in a court or tribunal and can include barristers, solicitor advocates, and chartered legal executives. Advocates therefore play a key role in the legal aid sector, where an inability to secure these services would damage the system's ability to deliver swift access to justice for the public. However, there is a lack of knowledge about their work and experience due to existing reporting infrastructure, where they are only partially captured within Legal Aid Agency (LAA) reporting. Specifically, the structure is such that solicitor firms are contracted by the LAA, and then these firms then instruct advocates, meaning the LAA does not have a direct relationship with advocates. Some information is reported by firms on advocates doing legal aid work, but in other areas, especially in immigration, mental health, and family work we have no information about who is doing this work.

The aim of this research is to understand the current experience of working in legal aid advocacy and how this differs between types of advocates. It also seeks to understand the place of legal aid work in an advocate's career and development. This research seeks to answer:

1. Who are the advocates that are currently unidentified in Legal Aid Agency (LAA) data? *(To be answered through analysis and in discussion with MoJ analysts)*
2. What are the perceptions of different types of advocates (barrister and non-barrister) in the civil-legal aid sector? *(To be answered through sub-group analysis)*
3. What factors are important in solicitors' selection of an advocate? (Section E)

4. How does legal aid advocacy work present in most advocates' careers and how is it perceived? (Section D)
5. What incentivises and disincentivises advocates to do legal aid work? (Section E)
6. How sustainable is legal aid advocacy felt to be by advocates? What recommendations do they have for improvement? (Section F)

Additional areas of interest from inception meeting:

1. Was there any good practice that LASPO got rid of? (Section F)
2. What is the impact of COVID-19 and the accompanying transition to online services (if any)? Are things better or worse than pre-COVID-19? (Sections D, E, F)

### **Interview principles**

This guide is for use with 40 barristers, solicitor advocates, chartered legal executives and instructing solicitors. The interview will be conducted over the phone or by video conference. This guide is intended to be used with a mix of individuals with varying characteristics and backgrounds. As such, it does not contain pre-set questions that must be asked in each interview, but rather lists the key themes and sub-themes to be explored with participants, where relevant, in each interview. Words or short phrases are instead used to indicate the study issues and allows the researcher to determine the formulation of questions and how to follow up. This encourages the researcher to be responsive to the situation and most crucially to the terms, concepts, language and behaviours used by the participants.

It does not include follow-up questions like 'why', 'when', 'how', etc. as participants' contributions will be fully explored in response to what they tell us throughout in order to understand how and why views and experiences have arisen. The order in which issues are addressed and the amount of time spent on different themes will vary between interviews but the key areas for discussion are the same. Questioning and probing will be framed to ensure we understand participants' situations as they view them. Researchers will adapt the approach, as much as possible, to suit the needs of each participant. The prompts provided are not exhaustive, but rather indicate the types of content we would expect to be covered – this may vary across participants with different characteristics.

## B Researcher introduction (c. 5 mins)

**Introduction:** I would like to start by thanking you for taking the time to speak with me today and for participating in this interview. My name is [name] and I'm a researcher/interviewer from IFF Research, an independent market and social research agency. We are conducting this research on behalf of the Ministry of Justice and I'd like to talk to you about your experiences in civil legal aid advocacy.

**Research and Interview Purpose:** This research is part of the Review of Civil Legal Aid and aims to explore the current landscape of civil legal aid advocacy to fill in gaps in current knowledge and to create an updated understanding of the sector. To meet this aim, we are conducting interviews with advocates (barristers, solicitors and other legal professionals) and solicitors with experience of instructing an advocate.

**How their info will be used:** Your views and experiences will be looked at together with views of others taking part in interviews. These views will be analysed by theme then a report will be written based on those themes.

**Reassurance:** Participation in this research is voluntary and there are no right or wrong answers. The Ministry of Justice will not know who has and has not taken part.

Any personal data you provide to us will be kept until one year after the project finishes, in April 2024, and then will be destroyed. Your data will not be shared with any other organisations. You can ask us for a copy of the information we hold on you, and you can also ask for your information to be deleted if you change your mind about taking part and let us know before January 2024. You can do this by emailing [legalaidstudy@iffresearch.com](mailto:legalaidstudy@iffresearch.com), or by phoning 020 7250 3035.

**Interview length and approach:** The interview will take around 45 to 60 minutes, depending on how much or how little you have to say. In the interest of time, we may need to gently move you along during the discussion to ensure we capture your experiences in a number of areas.

**Audio recording:** We would like to record the discussion so that we can accurately capture their views and focus on the discussion rather than writing lots of notes. The



recording will be stored securely and only the research team will have access to the recording.

Any questions before we start?

Start recording: acknowledge consent for being recorded.

## C Participant introduction (c. 5 mins)

Ask all

**Please could you introduce yourself and tell us about your current job / work?**

- area(s) of law they specialise in
- if they specialise in a particular court type

If they work for a firm

**Could you give me a brief overview of the firm you work for?**

- type of firm
- amount of legal aid work firm undertakes (vs non legal aid)
- area that law firm currently provides legal aid advocacy in

If they are an instructing solicitor

**Have you ever been involved in legal aid advocacy cases?**

## D How advocates get into civil legal aid work and what motivates them (C.10 mins)

For those who have current or any past experience as advocates

**At what stage in your career did you start working in legal aid and legal aid advocacy?**

- How long they have worked in civil legal aid and advocacy
- Check if area of law they started working in legal aid for is same as currently – If not, reasons

**How was legal aid advocacy introduced to you?**

- who first introduced it
- what they recall about how they introduced it

**Thinking back to when you started taking up legal aid and advocacy work, why did you decide to do this?**

- Reasons behind decision
  - personal choice
  - driven by firm
  - other reason?
- whether any reservations
  - if so, what
- How their reason compares to reasons others within the sector have

**Thinking back to when you started taking up legal aid and advocacy work, what kind of support or training did you receive?**

**Thinking about your work now, for what reasons would you say you currently take up legal aid and advocacy work?**

- whether different to original reasons
- what, if anything, has changed

**When do you think it is best to start getting involved in legal aid advocacy work in a law career?**

- Explore benefits at start of career vs later in career
- Explore draw backs at start of career vs later in career
- What key experience should a legal professional have before getting involved

**If you were at the start of your career now how would you feel about taking on this type of work?**

- Explore feeling and reasons for feeling this way

## **E Civil Legal aid work and non-legal work (c. 15 mins)**

**For those currently working as advocates (15 mins)**

**Can I just check, is your caseload solely made up of advocacy work?**

- Explore any work that is not funded through legal aid

**If not just advocacy work:**

**Roughly what proportion of your typical caseload is advocacy work?**

**Of your advocacy work, typically what proportion is funded through legal aid?**

- (Note to interviewer) Excluding any advocacy work which is pro-bono, charity funded, funded through a business or by a client themselves, etc.

**How, if at all, has this composition changed over time?**

**Please briefly explain the typical process of how you take on legal aid advocacy work.**

- How this decision is made
  - Who is involved
  - Who has final say and under what circumstances
- Whether this is a choice or assigned through the firm

**What types of advocacy work do you prefer to work on?**

- types of work
- reasons for preferences
- benefits of this type of case
- challenges of this type of case
- whether they would like to do more work in this area

**What types of advocacy work do you prefer not to work on?**

- types of work
- reasons for preferences
- challenges of this type of case
- any benefits of this type of case

**What, if any, barriers to complete the work. do you experience when taking on legal aid advocacy work?**

(Interviewer: explore all barriers fully)

- Causes of barriers
  - the type of case
  - the type of court
  - Other?
- the impact of each barrier
  - On you
  - On the firm/organisation
  - On the client
- how these barriers could be overcome
- what, if anything, MoJ could do to help overcome these barriers.

(If financial suggestions, ensure to cover other non-financial suggestions.)

- How common are these barriers
  - to their area of law / other areas of law
  - to all advocacy professionals

**How, if at all, do the ‘rights of audience’ rules help you when advocating for legal aid clients?**

- (Additional information for participant if needed) The ‘right of audience’ is the legal right of a lawyer to appear in court on behalf of a client. Solicitors have rights of audience in the magistrates’ court and the county court. Barristers have rights of audience in all courts.

**Is there anything about the rights of audience rules which can cause you difficulties?**

**What, if any, are the main differences in undertaking legal aid advocacy cases, compared with non-legal aid advocacy cases?**

- type of work involved
  - Level of preparation needed

- type of case
  - Complexity of cases
- Any differences around the quality of the provision on offer
- Any differences in how the work is viewed – e.g. more or less positively

For instructing solicitors who do not work as advocates (15 mins):

**Please briefly explain to me how you assign an advocate once you have been contacted by the Legal Aid Agency (LAA)?**

- overview of the key stages involved in the full process – from contact to assigning
  - whether there are multiple decision stages
- the factors they are considering when deciding who to assign
  - Most important factors
  - Less important factors
- whether there are certain professionals which are easier to assign – explore reasoning in full
- whether the professional can decline to be assigned
  - If so, what happens next

**In what, if any, instances is it easier to assign an advocate?**

- Type of case – capture the case types and/or features of the cases
- Level of administration
- Whether the type of professional they can assign has any impact
- Other reasons/ circumstances

**In what, if any, instances would you say it is harder to assign an advocate?**

- Type of case – capture the case types and/or features of the cases
- Level of administration
- whether the type of professional they can assign has any impact
- Other reasons/ circumstances

**What happens after the advocate is assigned to the case?**

- capture the steps
- the instructing solicitor's involvement after an advocate has been assigned

- Nature of involvement (typically)
- Duration of involvement (typically)
- the advocates role after they have been assigned the case – what do they do to progress the case

**What, if any, barriers do advocates experience when taking on legal aid advocacy work?**

(Interviewer: explore all barriers fully)

- Causes of barriers
  - the type of case
  - the type of court
  - Other?
- the impact of each barrier
  - On you
  - On the firm/organisation
  - On the client
- how these barriers could be overcome
- what, if anything, MoJ could do to help overcome these barriers.

(If financial suggestions, ensure to cover other non-financial suggestions.)

- How common are these barriers
  - to their area of law / other areas of law
  - to all advocacy professionals

**Solicitors currently working as advocates and instructing other advocates (15 mins)**

**Please briefly explain the typical process of how you take on legal aid advocacy work.**

- How this decision is made
  - Who is involved
  - Who has final say and under what circumstances
- Whether this is a choice or assigned through the firm

**How, if at all, do the ‘rights of audience’ rules help you when advocating for legal aid clients?**

- (Additional information for participant if needed) The ‘right of audience’ is the legal right of a lawyer to appear in court on behalf of a client. Solicitors have rights of audience in the magistrates’ court and the county court. Barristers have rights of audience in all courts.

**Is there anything about the rights of audience rules which can cause you difficulties?**

**Please briefly explain to me how you assign an advocate once you have been contacted by the Legal Aid Agency (LAA)?**

- overview of the key stages involved in the full process – from contact to assigning
  - whether there are multiple decision stages
- the factors they are considering when deciding who to assign
  - Most important factors
  - Less important factors
- whether there are certain professionals which are easier to assign – explore reasoning in full
- whether the professional can decline to be assigned
  - If so, what happens next

**In what, if any, instances is it easier to assign an advocate?**

- Type of case – capture the case types and/or features of the cases
- Level of administration
- whether the type of professional they can assign has any impact
- Other reasons/ circumstances

**In what, if any, instances would you say it is harder to assign an advocate?**

- Type of case – capture the case types and/or features of the cases
- Level of administration
- whether the type of professional they can assign has any impact
- Other reasons/ circumstances

### **What happens after the advocate is assigned to the case?**

- capture the steps
- the instructing solicitor's involvement after an advocate has been assigned
  - Nature of involvement (typically)
  - Duration of involvement (typically)
- the advocates role after they have been assigned the case – what do they do to progress the case

### **What, if any, barriers do advocates experience when taking on legal aid advocacy work?**

(Interviewer: explore all barriers fully)

- Causes of barriers
  - the type of case
  - the type of court
  - Other?
- the impact of each barrier
  - On you
  - On the firm/organisation
  - On the client
- how these barriers could be overcome
- what, if anything, MoJ could do to help overcome these barriers.  
IF FINANCIAL SUGGESTIONS, ENSURE TO COVER OTHER NON-FINANCIAL SUGGESTIONS.
- How common are these barriers
  - to their area of law / other areas of law
  - to all advocacy professionals



## **F What changes have been seen in the sector and supply of civil legal aid advocates (15 mins)**

Ask all

**What, if any, changes have you seen in the civil legal aid sector in the last few years (around 2–3 years)?**

(Interviewer note: if individual has been working in the sector for a long time please ensure they focus on the last few years initially and you cover changes which are more recent than LASPO (2012).)

- Explore all changes
- Have they seen any changes in the proportion of barristers versus solicitors undertaking legal aid advocacy
- Explore impact of changes
  - On them
  - On civil legal aid profession
  - On clients
  - Other?

**What, if any, changes have you seen since Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) was introduced in 2012?**

(Interviewer note: if heavily focusing on funding impacts, please ensure to cover other non-financial impacts.)

- Explore all changes
- Explore impact of changes
  - On them
  - On civil legal aid profession
  - On clients
  - Other?

If working in sector over 11 years (pre LASPO)

**Thinking back to before LASPO was introduced – pre 2012. What, if any, good practice was removed by LASPO?**

- what was removed or changed
- impact of removal

**What, if any, impact has COVID-19 had on how the legal aid sector operates, and in what way?**

- positive impacts
- negative impacts
- Explore the shift to online/ virtual meetings with clients on how the legal aid sector operates
- Explore shift to online/ virtual court sessions on how the legal aid sector operates
- Explore any longer term and ongoing impacts on how the legal aid sector operates

**Thinking about all the changes we have discussed, what types of advocates have been more affected by them?**

- Explore who has been affected more
- Explore why they think this is the case

**Again, thinking about all the changes we have discussed, what parts of the civil legal aid sector have been more affected by them?**

- Explore which sectors/ areas of law have been affected more
- Explore if certain elements or parts of cases have been affected more
- Explore why they think this is the case

Ask all

**What, if anything, could improve your experience of working as an advocate/instructing advocates?**

- Policy-related
- System-related e.g. practices, resourcing
- Learning and development

## G Debrief and Conclusion (c 3 mins)

Ask all

(Important to always cover where possible) Is there anything else you would like to mention that you haven't already had a chance to?

Ask all

Are you happy for us to re-contact you if we need to clarify anything that has been said during this interview?

Thank you so much for your time. Before we finish do you have any peers or colleagues who might be interested in taking part in the research? Would you be willing to forward an information leaflet to them?

**Recap GDPR elements:** Any personal data you provide to us will be kept until one year after the project finishes, in April 2024, and then will be destroyed. Your data will not be shared with any other organisations. You can ask us for a copy of the information we hold on you, and you can also ask for your information to be deleted if you change your mind about taking part and let us know before January 2024. You can do this by emailing [legalaidstudy@iffresearch.com](mailto:legalaidstudy@iffresearch.com), or by phoning 020 7250 3035.

**Thank and close.**

**If needed**

**Timing of the report publication:** aiming for spring 2024 and will be available on the government website

**Post-interview admin:**

1. Update booking sheet to confirm interview was completed, and participants' response to snowballing question above and take relevant actions if they agreed.
2. Add key findings to the 'emerging findings' tracker
3. Save audio recording to the secure folder with this label convention: participant number, interviewer initial, day/month/year
4. Complete analysis framework