



Legal Aid
Agency

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to achieve excellence in the delivery of legal aid

Director of Legal Aid Casework

Annual Report 2023-24

18 December 2024



HC 431

Director of Legal Aid Casework Annual Report 2023-24

Legal Aid Agency

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

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Foreword

I am pleased to present the Annual Report of the Director of Legal Aid Casework for the financial year 2023-24.

My role as Director of Legal Aid Casework was created under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). As Director I am ultimately responsible for the determinations on individual legal aid applications, ensuring the independence of decision-making from government.

I have held this role since 8 July 2019, which is when I took over the roles of both Director of Legal Aid Casework and Chief Executive of the Legal Aid Agency (LAA).

This report summarises the work carried out on my behalf as Director. It includes decisions made and the processes followed, including the mechanisms that

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exist for holding me as the Director to account and scrutinising the LAA's work.

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

A handwritten signature in black ink, reading "Jane Harbottle". The signature is written in a cursive style with a large, sweeping initial "J".

Jane Harbottle

Director of Legal Aid Casework

Introduction

1. The Director of Legal Aid Casework (the Director) is designated by the Lord Chancellor under section 4 of the LASPO Act 2012. The role of the Director is to make determinations on the provision of legal aid in individual cases.
2. The Director acts independently of the Lord Chancellor and other Ministers. Clear internal processes and structures are in place in the LAA to ensure that this independence is maintained. These are set out in more detail in this report.
3. In practice, many of the functions exercised by the Director are delegated to LAA staff under section 5(4) of the LASPO Act 2012. The LAA came into existence on 1 April 2013 and is an Executive Agency of the Ministry of Justice (MOJ).
4. The Director is supported by the LAA Board in ensuring that robust practices are in place to maintain the independence of the decision-making process for granting legal aid.

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5. The roles of the Director and the Chief Executive of the LAA may be held by the same person. However, different accountability and reporting arrangements exist for the two roles. Both roles have been held by Jane Harbottle since 8 July 2019.
6. This report explains how the Director has carried out the functions specifically entrusted to the Director under the LASPO Act 2012 over the last financial year. The LAA has separately published its Annual Report and Accounts that covers the wider remit of the organisation.

The role of the Director

7. The Director is responsible for making determinations on individual applications for civil (including Exceptional Case Funding) and criminal legal aid as set out in part 1 of the LASPO Act 2012.
8. Under the LASPO Act 2012, the Lord Chancellor can issue directions and guidance to the Director about how to carry out their functions, but the Lord Chancellor must not issue such guidance in relation to individual legal aid applications. The Director must comply with any directions given and have regard to any guidance issued as well as acting in accordance with the LASPO Act 2012 and associated regulatory framework.
9. The Lord Chancellor has not published any new guidance documents in 2023-24.

Regulatory and legislative framework changes

10. The regulatory and legislative framework has also undergone changes in 2023-24:

I. The majority of amendments to legislation in relation to the Director's functions under civil legal aid have again concerned the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013. Most notably:

a. with effect from 3 August 2023 legal representation and family help (higher) provided to children in proceedings is now available without means testing.¹

b. with effect from 4 September 2023 the basis changed on which legal help (advice and assistance) in relation to inquests can be made available without a means test. An applicant can obtain means-free legal help before any grant of exceptional case funding for representation at the inquest where the Director, considers that a subsequent application for exceptional case funding would be reasonably likely to succeed.² A corresponding amendment to the Civil Legal Aid (Procedure) Regulations

¹ Regulation 5(1)(ba).

² Regulation 5(1)(na).

2012³ permitted the grant of legal help to be backdated in these circumstances.

- c. with effect from 1 May 2023 means-free legal representation was made available⁴ without a means test to parents or those with parental responsibility opposing an application for a special guardianship order under section 14A of the Children Act 1989.

II. Within the criminal legal aid scheme:

- a. with effect from 3 August 2023 amendments to the Criminal Legal Aid (Financial Resources) Regulations 2013 have made advice and assistance to children available without assessment of their means.⁵
- b. with effect from 10 February 2024, specified proceedings relating to Serious Disruption Prevention Orders under the Public Order Act 2023 were prescribed as

³ Regulation 23(1c).

⁴ Regulation 5(1)(db).

⁵ Regulation 5(2)(f).

criminal proceedings for the purposes of section 14(h) of the LASPO Act 2012.⁶

11. Amendments were made to both criminal and civil legal aid concerning proceedings under part 3 of the Domestic Abuse Act 2021 for domestic abuse protection orders and domestic abuse protection notices. Part 3 of the 2021 Act, however, was not brought into force in 2023-24.

⁶ Regulation 9(ug) Criminal Legal Aid General Regulations 2013.

Decision-making process and structure

12. Determinations on individual applications and the functions of the Director are in practice delegated to LAA staff.⁷ Specifically, individual case determinations are made by Case Management and the Exceptional and Complex Cases Team (ECCT) both managed by Alistair Adan, Deputy Director (DD) and totalling around 850 staff. Case Management is divided into two groups, Civil and Crime.
13. All work has been underpinned by the LAA Strategy which sets out four key guiding principles for the LAA: being user-centred; getting things right first time, taking a simplified and sustainable approach; and becoming a responsive, diverse, learning organisation. All of these enable the LAA to deliver faster, better

⁷ For some forms of service, individual determinations are delegated to legal aid providers. Civil: Legal Help, Help at Court, Family Help (Lower), Family Mediation and Controlled Legal Representation. Crime: Advice and Assistance, including Advocacy Assistance, under sections 13 and 15 of the LASPO Act 2012.

outcomes that work for legal aid clients, providers, taxpayers and LAA staff.

14. The LAA continues to work closely with stakeholders via the Process Efficiency Team (PET) for both Crime and Civil as well as the Civil and Crime Contracts Consultative Groups. Increased engagement with legal aid providers (providers) through these groups has enabled the LAA to make positive improvements to processes. Each PET meets regularly with representative bodies and providers monthly to identify operational issues and business improvements. In particular, the LAA has worked in close partnership with providers via this forum to address issues around decision-making, for example by increasing case ownership and communications and streamlining of the decision-making process where submissions are raised regarding exercise of discretion around trapped capital. The LAA has also provided training to providers through a series of 'help us say yes' seminars to support providers to submit complete applications to minimise unnecessary delays and rejections.

15. Civil Case Management includes Legal Merits, Family High-Cost Cases, Means, Civil Finance, Records Management and Central Business Support teams as well as dedicated Contact Centre Teams.
16. Crime Case Management includes the National Criminal Applications Team, Crime Billing Team, Criminal Finance Team, a Contact Centre Team, and the Criminal Cases Unit.
17. The LAA has continued to develop a new service for applying for criminal legal aid, Crime Apply, which uses electronic forms (known as CRM14 and CRM15 eForms). As of 31 March 2024 this service was on track to replace the existing application process by August 2024. Development of the Civil Apply service has also continued, with 140 providers now onboarded who can submit applications in domestic abuse cases and some family cases (known as section 8 cases). Over 28,000 applications have successfully come through so far. Functionality continues to be developed to allow special Children Act 1989 applications through the service as well as onboarding more firms.

18. The LAA continued to work closely with His Majesty's Courts & Tribunals Service to support the rollout of the Common Platform in criminal courts, ensuring it can process applications and bills for cases that come through the platform. By the end of this reporting period the platform was live in 100% courts across England and Wales, and the LAA had processed over 275,000 applications and more than 447,000 bills.
19. The LAA has continued to work closely with providers and policy colleagues in the MOJ to implement legal aid policy reform. This has included progress on implementing changes following the Criminal Legal Aid Independent Review (CLAIR). New fixed fees for pre-recorded cross examination of a witness in section 28 cases⁸ and additional case preparation in cracked and trial matters have been introduced. As part of the first phase of the Means Test Review (MTR), the means test has been removed for applicants under 18 applying

⁸ Section 28 of the Youth Justice and Criminal Evidence Act 1999 relates pre-recording evidence and cross-examination before the trial for vulnerable complainants and witnesses.

for civil legal representation, criminal advice and advocacy assistance; legal representation for parents of children facing withdrawal of life-sustaining treatment proceedings; and legal help for inquests involving a possible breach of European Convention on Human Rights (ECHR) rights or significant wider public interest. The LAA will continue to work in partnership with MOJ, Justice Digital and MOJ Policy, to deliver complex change at pace to support the legal aid market and the Department's objective on swift access to justice.

20. The ECCT deals with the more costly and complex civil cases funded by the LAA as well as immigration cases, except those funded via controlled work. Many applications received by the Director and referred to the ECCT continue to have a high profile.
21. Exceptional Case Funding (ECF) falls under the ECCT. The ECF scheme covers all applications outside the scope of ordinary civil legal aid funding under the LASPO Act 2012. ECF can cover all forms of service including legal help and controlled legal representation. As set out in section 10 of the LASPO Act 2012, ECF applies

where the failure to provide legal aid would be a breach, or where there is a risk of a breach, of:

a. the individual's Convention rights (within the meaning of the Human Rights Act 1998); or

b. any rights of the individual to the provision of legal services relating to retained enforceable EU rights.

22. ECF applications must be considered on an individual basis, in light of the facts and the statutory requirements for funding and having regard to the guidance on ECF and case law. Applications can be, and sometimes are, made directly by applicants.

23. To ensure that legal aid legislation and guidance issued by the Lord Chancellor are applied in a consistent manner, advice and training have continued to be provided to all LAA caseworkers, tailored according to the particular role of each casework team.

24. Legal advice to the Director is provided by the Central Legal Team staffed by lawyers employed by the Government Legal Department and assigned to the LAA. The team is headed

by the Principal Legal Adviser and acts solely for the LAA when exercising the functions of the Director or the operational legal aid functions of the Lord Chancellor. There are clear protocols restricting what information members of that team may share outside of the LAA.

25. Decisions on individual applications are delegated to caseworkers with the opportunity for escalation as necessary. Ultimately, the decision to grant or refuse an application remains that of the Director.

Appeals and reviews

26. All determinations made by the Director are subject to a right of internal review where requested. Furthermore, unless the application is for ECF, or the Director determines that the case is not within the scope of the LASPO Act 2012, there is a further right of appeal to an Independent Funding Adjudicator (IFA). IFAs can be a solicitor or barrister or Fellow of the Chartered Institute of Legal Executives from private practice. IFAs are members of the Funding and Costs Appeals Review Panel (FCARP). Panel members are not employees of the LAA and act independently.

27. The decision of the IFA on certain issues is binding on the Director. These are:

- any assessment of the prospects of success of a case,
- whether a matter has overwhelming importance to the client,
- the cost-benefit ratio of the proceedings, and
- discharge or revocation based on a client's behaviour.

28. Other issues are referred to the Director for reconsideration.

29. Some panel members in their roles as Independent Costs Assessors (ICAs) consider appeals against the provisional assessment of costs by LAA staff. Costs Lawyers are also eligible to apply for the ICA role.

30. Appeals are allocated according to the specialist areas of law and or costs declared by each panel member.

31. There is a sub panel, the Special Controls Review Panel (SCRIP), which is formed of three specialist members of the FCARP who consider

appeals relating to certain high-cost cases and other more complex cases. Within the FCARP there are 15 SCRP members.

32. Aside from SCRP, most appeals are considered by a single panel member.
33. There were 62 panel members as at 31 March 2024. A recruitment exercise for the FCARP began early in 2024. An induction package and online training will be provided for those who are appointed.
34. If a client is dissatisfied with the final determination following a review and or appeal the only recourse remaining is litigation.

Litigation

35. The Director's decision-making in individual cases is susceptible to challenge in the courts, including by way of judicial review. Further, the Director is affected by any wider challenges brought to the operation of the legal aid scheme.
36. No challenge against the Director reached a final hearing in the course of 2023-24.
37. On the wider operation of the legal aid scheme the main challenge was that brought by the Law

Society against the Lord Chancellor in relation to the response to the recommendations of the Criminal Legal Aid Independent Review (CLAIR) report, *R (on the application of Law Society of England and Wales) v Lord Chancellor* EWHC 155 (Admin). The Law Society challenged the failure to implement the main recommendation of the report, concerning the additional funding required for criminal legal aid solicitors. The challenge was successful in part, the Court finding that it was irrational and in breach of the “Tameside” obligation to make relevant enquiries for the Lord Chancellor not to have carried out modelling as to whether fee increases lower than the recommended 15% might have furthered the aims of the report.

Accountability

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

Parliamentary questions and Freedom of Information Act requests

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

40. In 2023-24 the LAA received 291 requests for information under the Freedom of Information Act. Of these, 51 related to the functions of the Director of Legal Aid Casework specifically. The majority related to grants of legal aid under ECF,

applications in the Immigration and Asylum category of law and the applications considered under the LAA's High Profile Cases Standard Operating Procedure.

41. In the same period there were 39 legal aid operations related parliamentary questions. Of these, eight related to the Director specifically. Grants of legal aid under ECF and in the Immigration and Asylum category of law were common topics. All responses to written parliamentary questions are published on [Parliament.UK](https://www.parliament.uk).

42. Information about an individual legal aid client is likely to be personal data and can only be released where the case meets the criteria set out within the UK General Data Protection Regulation and the Data Protection Act 2018.

Complaints

43. The LAA thoroughly investigates every complaint it receives using a two-tier complaints procedure. The initial complaint gives the LAA the chance to review the way the matter was handled at a local level and put the situation right if possible. If a complainant is not content

with the initial response, they can escalate their complaint and request a further review. If the complainant remains dissatisfied with the escalated response, they have the right to refer their complaint to the Parliamentary and Health Service Ombudsman (PHSO) via their local MP.

44. Complainants may also request financial redress from the LAA where there has been maladministration. As with complaints, if the complainant is dissatisfied with the LAA's response they have the right to refer their complaint to the PHSO via their local MP.
45. The LAA does not separately record complaints or compensation claims that relate specifically to the remit of the Director. Challenges to individual funding determinations should be made under the correct review or appeal process. However, a significant proportion of complaints, compensation claims and PHSO referrals relate to the applications process or the calculation of criminal contributions both of which concern the functions of the Director.

Statistics

46. The LAA deals with applications for legal aid across various categories of law. The LAA publishes national statistics on numbers of applications within the Legal Aid Statistics bulletin. This is published every quarter and statistics covering the period to the end of March 2024 were most recently published on [26 September 2024](#).
47. The total number of applications for legal aid was 388,888 in 2023-24, an increase of 7% compared to 2022-23. Of these, 96% were granted, this can be broken down further into the following areas. The number of legal aid cases administered by the LAA has increased by 11% from 2022-23 to 2023-24.
48. The number of applications for legal aid in the magistrates' courts increased by 7% in 2023-24 compared to 2022-23. Overall, 172,971 applications were received, of which 97% were granted. 97,026 applications for legal aid in the Crown Court were received in the same period, and this was 16% higher than the previous

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financial year. The proportion of Crown Court applications granted remains at 99%.

49. 115,548 applications for civil representation were received between April 2023 and March 2024.
50. 12,273 applications for civil representation supported by evidence of domestic violence or child abuse were received between April 2023 and March 2024, up 4% from the previous financial year. 10,588 certificates for civil representation were granted in the same period via the domestic violence and child abuse gateway.
51. 3,343 ECF applications were received between April 2023 and March 2024, which is a 2% decrease compared to the previous financial year.

Equality and Diversity

52. The LAA is subject to the public sector equality duty under section 149 (1) of the Equality Act 2010 and contributes to the delivery of the MOJ People Strategy.
53. The LAA requests that applicants for legal aid provide some personal equality information. This information enables the LAA to understand better the needs of legal aid applicants and compile statistics on their diversity.
54. The Director has reviewed the equal opportunity information that recipients of legal aid provided during 2023-24 to monitor the extent to which the LAA continues to cater for the diverse population of England and Wales.
55. The LAA published statistics relating to the diversity of legal aid clients over the period 2023-24 as part of the Legal Aid Statistics bulletin published on 26 September 2024. The Director will continue to review this information over the coming year.

Conclusion

56. This report demonstrates that the LAA continues to ensure that controls and processes are in place to ensure the role of Director is conducted independently and to the highest standards of objectivity and transparency. The LAA shows its capabilities in responding to legislative and regulatory changes and in providing the support that the Director needs to perform their duties.
57. A copy of this report has been sent to the Lord Chancellor in accordance with section 7(3) of the LASPO Act 2012. The Lord Chancellor will lay a copy of the report before Parliament.



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