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# LASPO 2012: ten years and beyond – a socio-legal study of the impact of legal aid cuts on service providers in England and Wales

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## ABSTRACT


Major reforms via the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 and subsequent reforms have reduced the legal aid budget and the scope of eligibility in criminal as well as civil cases. According to Mansfield et al., the principles of justice that embody the legal aid provision has been neglected by governments for over a decade and as such; created a gap that emasculates the most vulnerable in society, such as recipients of legal aid. This study employs an interview-based approach to investigate alternative perspectives in terms of the cuts and widespread impact on service providers in England and Wales, such as barristers, and solicitors. Detailed qualitative data were collected to provide insights into the diminishing legal aid scheme through the lived experiences of both civil and criminal legal aid providers. The study examines the concerns of service providers regarding their future as public defenders and the future of the judicial system post-LASPO 2012, focusing on safeguarding the rights of individuals facing litigation and ensuring that newly qualified lawyers are not deterred from public defence roles due to the long-term effects of ongoing legal aid cuts.

## KEYWORDS

LASPO 2012; criminal legal aid; civil legal aid; barristers; solicitors; access to justice; the law society of England and Wales; vulnerability theory; COVID – 19; cost of living crisis

## 1. Introduction<sup>1</sup>

The provision of legal aid is considered a ‘paper right’ because the rights bestowed exist on paper only,<sup>2</sup> and its essential importance, is not reflected in practice.<sup>3</sup> Legal aid is a crucial component of access to justice, ensuring individuals faced with litigation have access to fair trials through legal assistance. The 1945 report of the Rushcliffe Committee

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<sup>1</sup>See reforms effective from 2 December 2013; 27 January 2014; 20 March 2014; 22 April 2014 that targeted criminal legal aid. <<https://www.gov.uk/government/statistics/a-guide-to-legal-aid-statistics-in-england-and-wales/user-guide-to-legal-aid-statistics-in-england-and-wales>> accessed 7 October 2022.

<sup>2</sup>Michael QC. Mansfield, Morris Anna, and Fraser Russell, (2013) 64 *Legal Aid Socialist Lawyer Pluto Journals* 22.

<sup>3</sup>Deborah L. Rhode, ‘Access to Justice Equal Justice Under Law: The Gap Between Principle and Practice’ (2004) Chapter 1, p. 1.

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set the pace for the legal aid scheme in England and Wales; initiated by the Labour Party as a post-World War II agreement by virtue of the Legal Aid and Advice Act 1949, to help and maintain the balance of legal power between ordinary citizens and the rich in terms of legal advice and legal representation.<sup>4</sup> The assistance was means tested and it acknowledged that there was a great need for a fundamental right, that targeted the working classes and less the privileged at the time. According to Heron,<sup>5</sup> the provision was initiated to guarantee that all citizens were on the same footing when faced with litigation. Hence, the provision served to protect fair trial rights against the threat of eviction, social welfare needs, and unjust conviction. At the time of its launch, eight out of ten individuals were eligible.<sup>6</sup>

Cuts to the legal provision in England and Wales were first initiated in the Government's Consultation document (Proposals for the Reform of Legal Aid) launched on 15 November 2010.<sup>7</sup> In 2020/21 the criminal legal aid budget in England and Wales was £617 million, compared with £918 million in the previous year.<sup>8</sup> This was a substantial reduction from the 2011–12 budget when legal aid spending was at £2.2 billion. Legal Aid, Sentencing and Punishment of Offenders Act (2012) brought about a shift in what the public required and what governments were prepared to spare in terms of legal assistance funding. Thus, while the budget for legal aid has shrunk excessively over the years, so did the scope for eligibility. Consequently, public funding for welfare rights, debt, employment, the majority of immigration, family and housing has been affected<sup>9</sup> and in some cases scrapped. Furthermore, the reduction in the budget for legal aid also resulted in a decrease in the amount of compensation offered to legal aid service providers, threatening the solidity of the judicial system.

The in-depth qualitative study by Organ and Sigafoos<sup>10</sup> focuses on civil legal aid, e.g. family, employment and welfare benefits and argues that the drastic changes to the eligibility criteria via LASPO, had notable negative effects on access to justice for individuals seeking to rectify their legal predicaments using the scheme. The findings of their study reported that those who decided to handle their own case owing to lack of legal assistance, felt their matter was made worse, as lay individuals in the matters of law, while some had to abandon their case all together because of financial strains, social, emotional, physical, and mental distress. The authors also reflected on the overall ongoing impact of the cuts that reveals great savings but seem to have a greater impact on other institutions as individuals face other challenges as a consequence of not having appropriate access to legal advice and representation such as, the NHS and welfare benefits. They argue that free employment advice could help resolve a work-related matter and prevent individuals from having to claim benefits and stress acquired while trying to resolve a legal issue would incur an avoidable extra cost to the health care system.<sup>11</sup>

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<sup>4</sup>The legal aid system dates from 1949. The scheme was administered by the Law Society until the Legal Aid Act 1988, which established the Legal Aid Board. < <https://www.gov.uk/government/statistics/a-guide-to-legal-aid-statistics-in-england-and-wales/user-guide-to-legal-aid-statistics-in-england-and-wales>> accessed 7 October 2022.

<sup>5</sup>P. Heron, 'Legal Aid and the Impeding Cuts' (2011) 57 *Socialist Lawyer Pluto Journals* 28.

<sup>6</sup>*ibid.*

<sup>7</sup>Steven Cobb, 'Legal Aid Reform: Its Impact on Family Law' (2013) 35(1) *Journal of Social Welfare & Family Law* 3.

<sup>8</sup>Cobb, *id.*

<sup>9</sup>P. Heron, 'Legal Aid and the Impeding Cuts' (2011) 57 *Socialist Lawyer Pluto Journals* 28.

<sup>10</sup>James Organ and Jennifer Sigafoos, 'The Impact of LASPO on Routes to Justice Equality and Human Rights Commission Research Report' (2018) 118, 1–53.

<sup>11</sup>*ibid.*

Robins and Newman<sup>12</sup> undertook extensive empirical research into the LASPO cuts and the impact on recipients as well as legal aid providers, and contend that before the cuts, the legal aid provision was already ‘threadbare and fraying’ hence, the cuts were more or less the final blow as the criminal and civil legal aid scheme disintegrated under the pressure of lack of appropriate funding with regards to the reduced scope of eligibility, means testing and appropriate remuneration for service providers.

This study examines how the incessant cuts to legal aid have affected the integrity of the judicial system, particularly the efforts of service providers and the potential impact on fundamental human rights such as the right to a fair trial, access to justice, and access to appropriate judicial institutions. It includes the impact on service providers and its relation to the vulnerability theory. Existing literature on legal aid primarily focuses on the vulnerability of potential recipients who are greatly affected by the cuts as access to legal aid becomes increasingly limited. The objective of this study is to view the cuts resulting from LASPO 2012 from a different angle and propose that the service providers and their associated institutions such as the justice system can also be regarded as vulnerable.

## 2. Methods

This study adopts a socio-legal approach to investigate the link and relationship between service providers of legal aid and the law that underpins their scope of practice. This study will employ an interpretative qualitative approach through a purposive and snow-ball sampling technique to obtain appropriate respondents for the interview. When sourcing for respondents, a request for volunteers was sent to personal contacts via email as well as messaging on LinkedIn who then passed it on to other potential participants. Respondents were active and previous service providers of legal aid (barristers and solicitors) in England and Wales. In total sixteen respondents took part in the study. They comprised a mix of solicitors and barristers of varied gender and diverse ethnic backgrounds with expertise in civil, criminal, employment, and family law. The respondents are classified as legal aid providers in both England and Wales because the legal aid legislation is the same across both countries. The data collected are not indicative of the viewpoint of all service providers in England and Wales due to the limited number of respondents. However, the sample size adequately fulfils the objective of this paper.<sup>13</sup> The qualitative method utilised, is also considered appropriate in this context.<sup>14</sup> The bulk of the data were collected in person during the Criminal Bar Association strike at Parliament Square Garden on 6th September 2022, when it was practically convenient to persuade individuals to cooperate and talk frankly on the topic. The strike expressed the collective sentiments of practising service providers regarding the cuts, as they came together to voice their concerns en masse.

Twelve interviews were conducted face-to-face and four online. All responses were recorded using a digital voice recorder. No respondents were given any of the questions prior to the interviews. The responses pre-date subsequent recommendations and

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<sup>12</sup>J. Robins and D. Newman, *Justice in a Time of Austerity: Stories from a System in Crisis* (Bristol University Press, 2021) 1–99.

<sup>13</sup>M. N. Marshall, ‘Sampling for Qualitative Research’ (1996) 13(6) *Family Practice* 522.

<sup>14</sup>J. M. Morse, ‘Determining Sample Size’ (2000) 10(1) *Qualitative Health Research* 3.

attempts to resolve the matter of underfunding in the justice system. Interview questions were semi-structured, and the data collected were transcribed and analysed using conventional (inductive) content analysis which according to Mayring<sup>15</sup> ensures that investigations are specific to the respondent's comments. The findings of the study were categorised into appropriate key themes which were generated for this inquiry for a better understanding of the current and prospective future status of legal aid in England and Wales from a service provider's point of view. This approach also allows the researcher to fully engage in the collected data and allow new perceptions to form.<sup>16</sup> In addition, this article undergirds its primary data with secondary sources (books, journals, reports, newspaper articles) specifically targeting the legal aid provision in practice in England and Wales.

The findings derived from this study contend that a complete restructuring of the judicial system in England and Wales is essential, especially as criminal legal aid is necessary to mitigate the damage inflicted on the provision by LASPO 2012. This would entail ongoing monitoring of the provision, research, and compliance with the recommendations of independent bodies such as the Criminal Legal Aid Independent Review (CLAIR), and The Westminster Commission on Legal Aid, to ensure fairness and justice for legal aid service providers. As a result, the viability of legal aid service providers will hinge on the effective implementation of essential reforms aimed at the current deficient reimbursement policy.

In the interview, quotations following respondents who are barristers will be referred to as *BR* and solicitors *SR*.

### 3. Vulnerability theory: assault on service providers

Current literature on legal aid largely focuses on potential recipients who are deemed vulnerable owing to their inability to afford lawyers' services and access the protection they offer. When faced with litigation, they are automatically forced into a position where their fundamental right to a fair trial and the right to be heard in a court of law have been compromised. Legal aid is then triggered on the basis of the individual's guaranteed protections and in turn, is adopted (subject to an eligibility test) to protect the individual regardless of their social status.

The article moves away from the traditional definition of vulnerable, which is defined as someone in need of special care, support, or protection because of age, disability, risk of abuse or neglect,<sup>17</sup> to a nonconventional stress on civil and criminal legal aid service providers. Fineman<sup>18</sup> extends a broader definition of what is deemed vulnerable in society. She states that vulnerability should be understood as universal and constant, inherent in the human condition. Fineman further claims, it is an alternative perspective to traditional equal protection analysis which focuses on discrimination and

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<sup>15</sup>P. Mayring, 'Qualitative Content Analysis' (2000) 1(2) *Forum: Qualitative Social Research* Art. 20.

<sup>16</sup>N. Kondracki and N. Wellman 'Content analysis: Review of Methods and their Applications in Nutrition Education'(2002) 34 *Journal of Nutrition Education and Behaviour* 224.

<sup>17</sup>Vulnerabilities: Applying all our health Gov.uk <<https://www.gov.uk/government/publications/vulnerabilities-applying-all-our-health/vulnerabilities-applying-all-our-health>> accessed 2 March 2023.

<sup>18</sup>Martha A. Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law and Feminism* 1–23.

inattentiveness against certain defined groups.<sup>19</sup> Hence, the concept should be used to redefine and expand current ideas about state responsibility toward individuals and institutions and the fact that societal institutions play a significant role in maintaining and extending inequality.<sup>20</sup> The focal point, in this instance, is directed at the government as a societal institution, and the policies that determine the provision of legal aid in addition to how the policies are played out in practice. Furthermore, it examines the impact of these policies, particularly the extensive cuts to legal aid, on service providers and the long-term implications for the legal profession in England and Wales.

Both Dehaghani and Newman<sup>21</sup> examine vulnerability theory within the criminal justice system of England and Wales. They present three categories of who or what is considered vulnerable within the context of criminal legal aid. The authors name the litigants in the criminal process as the traditional bearer of the term vulnerable. They contend that personnel within the criminal justice system from the moment of arrest; custody officers and defence lawyers are also vulnerable. This is in addition to the judicial institution itself,<sup>22</sup> which continues to face setbacks such as backlogs, limited duty solicitors and a rapid reduction in legal aid firms.<sup>23</sup> Though not specifically stated, vulnerability theory is also applicable to civil legal aid service providers as they continue to face sustainability issues as essential funding dissipates.

On the impact of the LASPO cuts on newly qualified lawyers, Fineman<sup>24</sup> argues that new lawyers are vulnerable from the time they complete law school to the time they start work in a law firm, and can be manifested in various forms, one of which is the hierarchical structure at the workplace. However, within the parameters of this paper, Fineman cites the state and institutions that govern the activities at law firms as major players that may potentially exacerbate their vulnerability. Hence, vulnerability in this circumstance is inevitable. Nonetheless, Fineman, further argues that vulnerability theory aims to hold policy makers and legal regulators accountable for their actions.<sup>25</sup> It is crucial that they acknowledge their own vulnerabilities as a social institution and take positive action to respond to it, as well as all individuals for whom they bear responsibility,<sup>26</sup> for example, service providers as well as recipients of legal aid.

My proposal is to broaden the theoretical scope and concentrate on the susceptibility of the current criminal and civil legal aid provision including the potential risk to the future of the judicial system in England and Wales. Thus, this study prioritises examining the effects of LASPO 2012, with reference to the legal aid cuts to legal aid service providers using empirical evidence.

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<sup>19</sup>ibid.

<sup>20</sup>ibid.

<sup>21</sup>Roxanna Dehaghani and Daniel Newman, 'We're Vulnerable too: an (alternative) Analysis of Vulnerability within English Criminal Legal Aid and Police Custody' (2017) 7(6) *Onati Socio-Legal Series* 1199.

<sup>22</sup>ibid.

<sup>23</sup>'Defending the future of criminal legal aid: what we're doing for members' (June 2022) <https://www.lawsociety.org.uk/topics/legal-aid/defending-the-future-of-criminal-legal-aid> (accessed 9 May 2024).

<sup>24</sup>Martha A. Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law and Feminism* 13.

<sup>25</sup>ibid.

<sup>26</sup>ibid.

#### 4. Remuneration for criminal legal aid providers

There is a general misconception regarding the financial standing of lawyers in England and Wales. The widespread belief is that all lawyers are automatically high earners once they start working in the industry.<sup>27</sup> It creates discontent when legal professionals air their grievances over the constant reduction in legal aid remuneration, especially when compared to the work they must undertake for each case they handle. Deardon<sup>28</sup> states that practitioners have to deal with government actors who undermine their work, citing that the negative public perception has further created more challenges when disagreeing with the cuts.

Thorton<sup>29</sup> explores the impact of fee reduction on the working practices of criminal defence lawyers arguing that lawyers are harshly critiqued and believes the focus should be directed at policy makers who, through their actions of trying to save funds at the detriment of service providers, encourage a self-interest focused practice.<sup>30</sup> The diminishing quality of working practices of legal aid service providers was cited as one of the challenges faced because of the cuts. A solicitor (SR) and a barrister (BR) reported their feelings thus:

You get people leaving the profession, it's already too stressful and I think when it becomes financially unattractive, you'll get more and more people leaving, and then the knock-on effect will be on clients who desperately need help. (SR)

... as people would be aware that over 300 persons have left in the past year, that's a huge percentage and it will increase if we lose this action. (BR)

Cooke<sup>31</sup> acknowledges the issues surrounding the LASPO cuts and the detrimental impact on work practices of both criminal and civil justice legal aid service providers and presents a 'shared orientation' model to better understand the working culture of legal aid lawyers to help develop a realistic approach to help bridge the gap that the cuts have created.

The recent protests by criminal law barristers in England and Wales in London<sup>32</sup> gave prominence to the future of their profession as public defenders, as well as the judicial institution as a whole. There was a transference in the narrative as service providers took radical action to express their concerns as legal aid provision continued to plummet due to lack of adequate funding. Views that social justice could be at risk if the incentives to join the profession were lost owing to the inability to sustain a living as a criminal legal aid lawyer. These solicitors argued passionately about this:

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<sup>27</sup>See section 7 for respondent interviews. See Monidipar Fouzder, Let's end the 'fat cat' lawyer myth once and for all (June 2018) <<https://www.lawgazette.co.uk/commentary-and-opinion/lets-end-the-fat-cat-lawyer-myth-once-and-for-all/5066426.article>> accessed 12 June 2024.

<sup>28</sup>Lizzie Deardon, 'Government Attacks on Lawyers "Undermine Rule of Law" says Lord Chief Justice' (November 2020) <<https://www.independent.co.uk/news/uk/politics/government-priti-patel-lawyers-activists-attacks-rule-law-b1720428.html>> assessed 2 March 2023.

<sup>29</sup>James Thorton, 'The Way in Which Fee Reductions Influence Legal Aid Criminal Defence Lawyer Work: Insights from a Qualitative Study' (2019) 46(4) *Journal of Law and Society*529.

<sup>30</sup>*ibid.*

<sup>31</sup>Emma Cooke, 'The Working Culture of Legal Aid Lawyers: Developing a 'Shared Orientation Model' (2022) 31(5) *Social & Legal Studies* 704.

<sup>32</sup>Criminal Bar Association strike at Parliament Square Garden 6th September 2022.

Firms who rely on legal aid have collapsed ... the profession can no longer sustain them, especially on the public funding matters, so the future is bleak. (SR)

By the time you say you are qualified, you're looking at substantial amounts of debt well over £50,000 and what is your earning capacity going to be? How are going to, for example, pay off that debt and secondly make a living? (SR)

Through underfunding, potential recipients of legal aid have lost faith in the judicial system and newly qualified legal aid lawyers are faced with financial barriers such as student loan debt and the lack of training opportunities after graduation.<sup>33</sup> It means many legal aid practitioners will more than likely leave the public defence sector and transition to more financially rewarding areas of law, such as employment, corporate, or intellectual property law, further widening the gap. This barrister reflected this disposition:

People should not get it twisted when we talk about barristers, barristers cover a huge spectrum of the profession. Ranging all the way from international law, company law, trust law, land law, shipping law, and aviation law. Those barristers are in completely different positions to those of us who practice public funding work and that's why I want people in the public to understand, and if you don't understand how, it all works, do yourself a favour, go down to a Crown Court. (BR)

In 2021, the Legal Aid Census was initiated to give an accurate picture of the legal aid provision in England and Wales with regard to the changes brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Its effects were exacerbated by the impact of the Covid-19 pandemic leading to loss of fees and court closures, as well as, further cuts to legal aid.<sup>34</sup> Five extensive surveys were conducted and analysed, drawing on education and training, salaries, fee arrangements, and job satisfaction of legal aid practitioners.<sup>35</sup> They also investigated how practitioners were adapting to the changes and their thoughts on what was needed to revive the current inadequate legal aid provision. The report argued that the pre-existing data on legal aid lacked context and only gave narrow insights into the operations of the scheme. The survey also revealed the hidden impact of the legal aid funding cuts on legal aid practitioners, past and present, who have been struggling over time to sustain the provision amidst other prevailing pressures such as welfare reform and reductions in local government funding. The impact of the cuts has resulted in the sharp drop in the number of firms that accept legal aid clients. Thus in 2013, there were 1,592 firms with criminal legal aid contracts<sup>36</sup> and 1,881 firms with civil legal aid contracts, but these numbers had dropped to 1,104<sup>37</sup> and 1,445 respectively by March 2021.<sup>38</sup>

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<sup>33</sup>We are Legal Aid (2022) Findings from the 2021 Legal Aid Census. Report Prepared by Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman and Sasha Aristotle p. 16.

<sup>34</sup>*ibid.*

<sup>35</sup>The survey included current and former legal aid practitioners. Organisations and chambers that engaged in legal aid services and prospective legal aid practitioners.

<sup>36</sup>Legal Services Commission, 'Legal Services Commission Annual Report and Accounts 2012-13' (2013) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/246661/0337.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/246661/0337.pdf) (accessed 20 February 2023).

<sup>37</sup>Roxanna Dehghani and Daniel Newman, 'The Crisis in Legally Aided Defence in Wales: Bringing Wales into Discussions of England and Wales' (2021) 41(2) *Legal Studies* 234.

<sup>38</sup>We are Legal Aid (2022) Findings from the 2021 Legal Aid Census. Report Prepared by Catrina Denvir, Jacqueline Kinghan, Jessica Mant, Daniel Newman and Sasha Aristotle pp. 9 -12.



In September 2022, the Law Society met with the Parliamentary Under Secretary of State in the Ministry of Justice to discuss the implications of the continued neglect of the criminal justice system if sufficient funding were not made available to sustain the system. The meeting took place after the government announced extra money to convince barristers to end the strike that took place in early September 2022.<sup>39</sup> Before the strike in 2021, Sir Christopher Bellamy KC<sup>40</sup> had recommended that criminal legal aid should receive an overall increase of at least 15% above present levels ‘as soon as possible’ with ‘no scope’ for delay.<sup>41</sup> Former Law Society president I. Stephanie Boyce concurred maintaining the government was not taking positive action despite knowing the implications of the cuts to justice. She stated, in support of criminal justice solicitors that the system needed a total overhaul to ensure its longevity: ‘... you cannot fix the problems in the system unless you fund all parts of it effectively.’<sup>42</sup>

Subsequently in November 2022, the government announced a vital increase in pay for criminal legal aid lawyers.<sup>43</sup> This was deemed to be the biggest ‘stimulus’ to have been received in decades. The proposal to increase funding was in response to the independent review of the criminal legal aid provision. Stating that ‘A strong and secure legal aid system is in the best interests of victims, witnesses and the wider public.’<sup>44</sup> The plans included £85 million for solicitors in addition to the £43 million investment for barristers in legal aid payments. Furthermore, there would be an annual payment of £11 million for expert fees to help sustain the sector. It would include a £16 million boost to increase the fees payable to solicitors’ representing clients in police stations.<sup>45</sup> The proposal incorporated plans to regularise standard fees to reflect the hours of work done based on the complexity of the case. The aim was to build an effective system that would guarantee high-quality legal support and ensure that lawyers were better and fairly paid,<sup>46</sup> which would improve work practices and, most importantly, raise the public’s perception of the judicial system as a whole.

The position on the lack of increased funding was further amplified by another former Law Society president, Lubna Shuja, who referred in particular to the need to increase criminal defence solicitors’ legal aid rates which were undervalued when the increase in pay was announced. In a progressive twist, Shuja stated that solicitors might refuse criminal legal aid work if they are not paid properly: ‘If we can see that there is an

<sup>39</sup>‘No Future in Criminal Defence for Solicitors Without 15%, We Warn Minister’ (September 2022). <<https://www.lawsociety.org.uk/topics/criminal-justice/no-future-in-criminal-defence-for-solicitors>> accessed 20 February 2023.

<sup>40</sup>‘Independent Review of Criminal Legal Aid’ <Independent Review of Criminal Legal Aid – GOV.UK ([www.gov.uk](http://www.gov.uk))> accessed 9 May 2023.

<sup>41</sup>‘No Future in Criminal Defence For Solicitors Without 15%, We Warn Minister’ (September 2022). <<https://www.lawsociety.org.uk/topics/criminal-justice/no-future-in-criminal-defence-for-solicitors>> accessed 20 February 2023.

<sup>42</sup>Law Society Considers Advising Members Not to Undertake Criminal Defence Work (September 2022). <<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/law-society-considers-advising-members-not-to-undertake-criminal-defence> work#:~:text=%E2%80%9CThe%20criminal%20justice%20system%20is,Stephanie%20Boyce> accessed 20 February 2023.

<sup>43</sup>Second Major Investment Boosts Fees for Legal Aid Lawyers (November 2022). <<https://www.gov.uk/government/news/second-major-investment-boosts-fees-for-legal-aid-lawyers>> accessed 6 February 2023.

<sup>44</sup>See <<https://www.gov.uk/government/consultations/response-to-independent-review-of-criminal-legal-aid/outcome/governments-full-response-to-the-criminal-legal-aid-independent-review-and-consultation-on-policy-proposals>> accessed 06 February 2023.

<sup>45</sup>ibid.

<sup>46</sup>Other proposals include a new reformed Litigators’ Graduated Fee Scheme (LGFS), £5 million per year will be invested in the youth court, an additional £21 million of investment a year for solicitor firms, a 15 percent fee rise for barristers working on existing as well as new criminal cases, £3 million for case preparation, and a further £4 million for lawyers involved in pre-recorded cross-examinations. Ibid.

area of work that is just not sustainable and not viable, we've got a duty to tell our members that.<sup>47</sup> However, solicitors are in most cases prohibited from striking because of duty of care limitations especially duty solicitors who have legal obligations to the Legal Aid Agency. Her statement responded to the government's failure to fulfil the 15 per cent minimum increase that was proposed by the independent review.<sup>48</sup> Hence, criminal legal aid solicitors were offered a 9 per cent rise, despite having gone 25 years without pay increases. Shuja also highlighted the current problems the criminal justice system was facing such as the increase in the average age of criminal duty solicitors from 47 to 49 over the past three years because junior lawyers refused to take on criminal legal aid work because it was not financially viable.<sup>49</sup> Consequently, the Law Society moved to challenge the government's 'irrational' refusal to implement the minimum recommended raise in court, claiming it is 'unlawful and irrational to ignore the recommendations.'<sup>50</sup> The Lord Chancellor and Deputy Prime Minister, at the time,<sup>51</sup> was approached to resolve the matter but refused to reconsider and rejected an offer of mediation. Shuja stated that solicitors who are the backbone of the criminal justice system had been short-changed and deserved equal treatment as criminal legal aid barristers: 'The criminal justice system is collapsing around us due to wholly inadequate government investment and irrational policymaking.'<sup>52</sup>

Yet, in June 2023, the Law Society was granted permission to bring a judicial review challenge against the government. Shuja hoped that the current Lord Chancellor would reconsider the proposal to implement a financially sustainable working environment for criminal defence solicitors and find a way of resolving the matter without the need for intervention from the court.<sup>53</sup>

## 5. What about civil legal aid?

Similar to criminal legal aid, the most damaging cuts to civil legal aid in England and Wales commenced in 2013 following the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act (2012). The aim was to reduce the budget by £350 million. Family law, immigration, welfare benefits, employment and clinical negligence were mainly targeted.<sup>54</sup>

<sup>47</sup>Haroon Siddique, 'Law Society has 'Duty' to Tell Solicitors to Shun Underpaid Work, Says President' (October 2022) <<https://www.theguardian.com/law/2022/oct/23/law-society-has-duty-to-tell-solicitors-to-shun-underpaid-work-says-president>> accessed 20 February 2023.

<sup>48</sup>Independent Review of Criminal Legal Aid <Independent Review of Criminal Legal Aid - GOV.UK ([www.gov.uk](http://www.gov.uk))> (accessed 09 May 2023).

<sup>49</sup>Haroon Siddique, 'Law Society has 'Duty' to Tell Solicitors to Shun Underpaid Work, Says President' (October 2022) <<https://www.theguardian.com/law/2022/oct/23/law-society-has-duty-to-tell-solicitors-to-shun-underpaid-work-says-president>> accessed 20 February 2023.

<sup>50</sup>Siddique Haroon, 'Ministers Face Legal Battle With Criminal Solicitor's Over Legal Aid' (March 2023). <<https://www.theguardian.com/law/2023/mar/01/ministers-face-legal-battle-with-criminal-solicitors-over-legal-aid#:~:text=Last%20year%20the%20government%20agreed,to%20prosecution%20barristers%20last%20month>>(accessed 29 April 2023).

<sup>51</sup>Alex Chalk relaces Raab's role of the U.K.'s Justice Secretary in April 2023.

<sup>52</sup>See Siddique (n 50).

<sup>53</sup>Permission granted for court challenge over criminal legal aid decision (June 2023). <<https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/permission-granted-for-court-challenge-over-criminal-legal-aid-decision>> accessed 1 July 2023.

<sup>54</sup>Asher Flynn and Jacquelin Hodgson, 'Access to Justice and Legal Aid Cuts: A mismatch of Concepts in the Contemporary Australian and British Legal Landscapes.' In *Access to Justice and Legal Aid Comparative Perspectives on Unmet Legal Need* (2017) 1.

A 2017 report on family law after the implementation of LASPO 2012 detailed the adverse effects of the cuts on family justice including the difficulties faced by litigants.<sup>55</sup> One of the barriers mentioned was that they were not considered to be of high importance because they were deemed to be a consequence of the personal decisions of the parties involved. Thus, systems of Alternative Dispute Resolution (ADR) became more prominent in dealing with family matters. Although ADR is cheaper than courts, studies showed that ADR was not always the best solution for parties to civil cases, especially where claimants were classed as vulnerable and needed more structured frameworks such as the courts to resolve their disputes.<sup>56</sup>

Immigration is another sector that was highly transformed by legal aid cuts and the consequences not only affected service users but also service providers.<sup>57</sup> Meyler and Woodhouse argued that lowering provision of legal aid in the immigration sector has undermined and harmed it.<sup>58</sup> Nonetheless, after a push by the Law Society, the Ministry of Justice (MoJ) declared its intention to investigate the viability of civil legal aid contracts in fields such as family, housing, mental health, education, discrimination, and immigration.<sup>59</sup> In January 2024, an independent civil legal aid provider report was released. The results indicated a high proportion of service providers faced challenges in areas such as: ‘low fees than expected, the inability to bill for excess time spent and rigidity of the fee structure.’<sup>60</sup>

Cautious statements by the MoJ suggest that the civil legal aid cuts initiated by LASPO 2012 ‘have gone further than intended in impacting access to justice.’<sup>61</sup> It argued ‘... restoring legal aid for early advice would be both fair and cost effective in addressing relatively straightforward legal problems before they escalate and cost more in the long term. There is now a serious concern that, without some steps to restore a measure of access to justice, serious injustice will inevitably follow.’<sup>62</sup>

This was further bolstered by the former Law Society President Lubna in 2023 when she said, ‘... It is the minister’s job to bring the justice system back to full strength and I look forward to working closely with him to fight for improved access to justice for all.’<sup>63</sup>

## 6. LASPO 2012: the coup de grace?

This study uses interview data to provide a deeper understanding of the real-life experiences of service providers facing legal aid cuts. Despite being over a decade since the

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<sup>55</sup>Mavis Maclean and Helen Stalford, ‘Late Modern Justice for the Family’ (2013) 35(1) *Journal of Social Welfare & Family Law* 1.

<sup>56</sup>*ibid.*

<sup>57</sup>F. Meyler and S. Woodhouse, ‘Changing the Immigration Rules and Withdrawing the ‘Currency’ Of Legal Aid: The Impact of LASPO 2012 on Migrants and their Families.’ (2013) 35(1) *Journal of Social Welfare & Family Law* 55.

<sup>58</sup>*ibid.*

<sup>59</sup>The Law Society ‘Civil legal aid review’ (January 2023). <<https://www.lawsociety.org.uk/topics/legal-aid/civil-legal-aid-review>> accessed 30 April 2023.

<sup>60</sup>Review of Civil Legal Aid: Provider Survey Report <https://assets.publishing.service.gov.uk/media/65aa4068ed27ca000d27b28a/civil-legal-aid-providers-survey.pdf> (accessed 12 June 2024).

<sup>61</sup>Monidipa Fouzder, ‘Restore Legal Aid for Early Advice: Conservative MP Joins Critics’ (June 2018) <https://www.lawgazette.co.uk/law/restore-legal-aid-for-early-advice-conservative-mp-joins-critics/5066437.article> (accessed 27 May 2023).

<sup>62</sup>*ibid.*

<sup>63</sup>Poopy Pow, ‘Westminster Update: Alex Chalk Appointed Lord Chancellor’ (April 2023). <<https://www.lawsociety.org.uk/topics/blogs/alex-chalk-appointed-lord-chancellor>> accessed 27 May 2023.

implementation of LASPO 2012, significant gaps in the current legal aid provision remain. The research identifies five themes: frustration; uncertainty; discouragement; disregarded; and vulnerability.

Seven questions were asked focusing on the influence of LASPO 2012 legal aid cuts on their capacity to offer effective legal assistance to their clients, the post-COVID era, the cost-of-living crisis and its implications for the scheme, as well as their views on the recent and potential future strikes by barristers. Additionally, the participants were asked to share their insights on the future of the legal profession in light of the cuts, notably human rights implications, and whether a return to the pre-LASPO legal aid era is warranted or even possible. Newman et al.,<sup>64</sup> use vulnerability theory to examine the ways in which the pandemic has affected the scheme regarding its impact on the needs of potential legal aid recipients and the capacity of the legal sector to fulfil those obligations. Consequently, the focus of the study was directed towards the ‘vulnerable legal subject’ in need of resources, namely legal advice and legal representation for both civil and criminal matters. The authors found that the pandemic further exacerbated the already impoverished scheme. The ones mainly affected were disadvantaged individuals, e.g. the low paid or of uncertain employment status, or those struggling with debt, or those with insecure immigrant status, who were locked out of the system because of the increased demand on legal resources and the harsh measures that were put in place prior to the outbreak.<sup>65</sup>

## 7. Have legal aid cuts gone too far?

This section contains an appraisal of opinions and illustrates the perception of legal aid service providers through their thoughts, lived experiences and viewpoints. The issues covered include excessive cuts to legal aid and their effects on potential recipients of legal aid, and experienced and newly qualified lawyers in both civil and criminal legal aid cases. The study shows that the fundamental right to legal aid will continue to be weakened and affect more people than envisaged, if the scheme continues on the path that it is currently on. I divide the analysis into five sections characterised as frustration, uncertainty, discouragement, disregarded, and vulnerability,

**(a) Frustration:** The respondents spoke of how the diminishing returns for legal work has affected their morale. They also shed light on how they came into the profession with high expectations of defending the needy, nevertheless many have left the profession because they could not afford or maintain a basic standard living on their pay. This is an increasing worry for the future of legal aid service providers especially those entering the profession:

I was forced to leave a profession I loved because I could not pay my rent. (BR)

Solicitors believed they were sidelined on remuneration and highlighted the implications of not amending the current system:

... solicitors are the first point of contact, so solicitors walking out would have a serious impact on the course of the justice system because barristers are secondary ... solicitors are the immediate contact for victims who want to use the legal aid system. (SR)

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<sup>64</sup>Daniel Newman, Jess Mant, and Faith Gordon, ‘Vulnerability, Legal Need and Technology in England and Wales International’ (2021) *Journal of Discrimination and the Law* 1.

<sup>65</sup>ibid.

Their frustration also extends to the lasting impact on justice as well as the recipients of legal aid:

I think that the fact that legal aid is much harder, and actually precluded in some areas now, where it used to be offered ... especially for those who have protected characteristics whether they have a disability or a minority ... we really have to stand up and chat about it ... and get either charity on their side or councillors on their side or find other ways in dealing with it. (SR)

Moreover, the incessant cuts rendered the scheme impractical, leaving many service providers with no choice but to move to a more lucrative area of law, triggering a decline in public defence professionals. For some, their devotion to the profession turned out to be a burden as they hoped things would improve over the years:

When I started 23 years ago, a criminal barrister told me not to come to the profession because of the bad rate of pay, since that time our rate has decreased by over 28% and in the last year, we've lost 300 and that's out of the total of 2400. (BR)

It is the best job in the world. Honestly, it is the best job. I actually call myself 'Mayor Public' because I go in when people need me then I leave, and I never get to see or hear from them again ... (BR)

Thus, a total overhaul of the operations of the judicial system would appear necessary to avoid the annihilation of an institution that is fundamental necessity to civil society:

I'm struggling to even think what it was like before 2012, it's been so long, what I would say is that it certainly has to be revised on the basis of the way it operates currently and the effects it is having on the criminal justice system. (BR)

If you talk to the people who started off their partnership purely on legal aid, they now kind of oh yeah, we don't do that so much now ... because they can't afford it. (SR)

Barristers argue the general public needs to understand the distinction between barristers in public defence and those in other sectors, which would make people more sympathetic to their plight:

You know when people talk about barristers, they use the generic terms. We are not talking of people who practice in other areas of law, i.e. the commercial barristers are not affected at all. This is publicly funded work, so family lawyers, criminal legal aid lawyers, civil legal aid lawyers, these are the people who are affected. (BR)

**(b) Uncertainty:** Uncertainty refers to the future prospects of legal aid providers as public defenders. The respondents detailed the impact of the LASPO cuts on businesses which forced many to opt out of accepting legal aid work as it was not sustainable for their business. There was a general concern that legal aid would become obsolete and vulnerable individuals would be left without protection to defend their rights when faced with litigation:

I can understand that we need to balance things up against other things but access to justice is a prerequisite to a prosperous economy and a peaceful nation, so you can't isolate it. (SR)

LASPO is actually part of the whole justice system so it's not just about paying lawyers it's about making the justice system work and the justice system is integral to a democratic society. (SR)

In addition, the number of vulnerable individuals has increased since the pandemic<sup>66</sup> along with the widespread cost of living crisis<sup>67</sup> again intensifying the challenges faced when attempting to access legal aid:

I think that all the amount of money on COVID and yet we have a vulnerable society ... we still have masses of vulnerable adults, children, people in society. (SR)

The uncertainty continues to have a huge impact on the number of public defenders willing to accept legal aid as they struggle to make ends meet. In the absence of legal representation, many individuals are left with no choice but to take matters into their own hands and represent themselves. Self-representation is considered a fundamental right in Common Law jurisdictions<sup>68</sup> but the implications for justice are far greater where litigants do not understand the law or know how to present their case before a judge without professional legal assistance:

... the majority of the cases we deal with today, they are what we call litigant in-person, basically, they are unrepresented, so they come to court not knowing the law so that's a significant impact on them as litigants. In that, they do not have representation, they do not know the process, and there's no one to advise them ... and you know there are serious implications to that. (SR)

The precariousness of the legal aid system even extends to the perceptions of the institutions symbolising justice<sup>69</sup>:

The way we are going, there won't be a legal aid system, because this government particularly doesn't seem interested, not just about remuneration for barristers, but if you go to the courtrooms, the ways in which buildings even operate, ceilings ... even today I heard ceilings falling down in the crown court heating systems don't work in the winter or is still hot in the summer, facilities don't work, there is no canteen left, well before you can get some lunch in the canteen. I mean even a little thing like that would be eroded away because of lack of investment in the system. (BR)

**(c) Discouragement:** The main feature of this subsection is the failure to remunerate practitioners properly; something that has lingered for many years without improvement. Respondents break down the process they must follow when they prepare a case that is subject to legal aid and how little they are paid in return. Solicitors argue that as the first point of contact, they are at a disadvantage as the case is dependent on how well the matter is handled at first instance. They also talk about the physical and emotional strain that they face and the number of hours they have to dedicate to prepare the case, including travel.

<sup>66</sup>FCA Finds the Covid-19 Pandemic Leaves Over a Quarter of UK Adults With Low Financial Resilience' (February 2021). <https://www.fca.org.uk/news/press-releases/fca-finds-covid-19-pandemic-leaves-over-quarter-uk-adults-low-financial-resilience> (accessed 24 March 2024).

<sup>67</sup>Emma McGowan, 'Impact of the Cost-Of-Living Crisis on the Access to Justice Sector' (April 2023). <https://www.lawgazette.co.uk/commentary-and-opinion/impact-of-the-cost-of-living-crisis-on-the-access-to-justice-sector-/5115846.article#:~:text=When%20coupled%20with%20a%20decrease,to%20justice%20gap%20even%20further> (accessed 25 March 2024).

<sup>68</sup>Rabbea Assey, *Injustice in Person: The Right to Self-Representation* (Oxford University Press 2018) 1–6.

<sup>69</sup>Tristan Kirk, 'London Courthouse has been Dubbed "Truly Dreadful" with the "Ugliest Courtrooms" in England' (March 2024) <https://www.standard.co.uk/news/uk/london-inner-crown-court-justice-funding-spending-bar-council-barristers-b1145341.html> (accessed 24 March 2024).

Respondents also referred to the burden of student loans while trying to make ends meet in their profession. They indicated a general sense of compassion for potential legal aid recipients as they are at a major disadvantage if the right to legal advice and representation is denied, but feel this will continue to be the case if changes are not made:

... A lot of people do not have access to justice due to the cuts and it has also affected the morale of barristers, and solicitors involved in legal aid work, so that's why you see a lot of people taking themselves away from the franchise of legal aid. (SR)

Thus, inadequate remuneration for services rendered also meant the quality of service provided suffered as a consequence:

... they spend a number of years to become lawyers and if the remuneration is so poor, the quality of job, the quality of decision making, and what they put, the input they put will be poor towards work. (SR)

The problem is going to be with access to justice because fewer and fewer junior barristers are coming through and you are going to have a complete lack, not only poor representation but lack of prosecution as well. (BR)

Respondents felt it was important to encourage and to maintain a balanced pool of diverse legal aid service providers to ensure all groups to litigation were confident they were fully represented:

It's quite tough for people entering the profession, especially ethnic minorities, doing mostly, legal aid work either in crime, family and immigration. (SR)

... it's a very considerable debt that people are leaving university with and the attraction for the Criminal Bar in particular with that sort of costs; are not going to be attractive to representatives of people from working class and ethnic minorities backgrounds. (BR)

**(d) Disregarded:** Respondents were clear in their feelings on how they were treated, despite their expertise and service as public defenders over the years. Solicitors felt they had been neglected the most and taken advantage of because they were unable to engage in strike action due to their contractual obligations. Barristers talked about the backlash received from the public when they decided to go on strike, citing misconceptions that all barristers and solicitors earn substantial amounts of money.

They argued that they have to constantly defend their positions and justify their protest actions. They believed that efforts to ensure they are paid in line with the work done had been swept under the carpet. They contended that a continued refusal to acknowledge the inherent problems that riddled the legal aid system would continue to undermine the integrity of the service:

... unfortunately, the way legal aid works, they use barristers, while solicitors are paid quite lower. The expert that you employ is paid much higher, but you do all the work. We've had cases where we have gone to court two, three, four times and you get maybe £200 £300 or £400, but you employ an expert who will get £1000 or £2000. (BR)

The current legal aid framework is impeding access to justice, it has affected justice, people are disenchanted with the low remuneration package and it's no longer encouraging. (SR)

If you're working in 'TESCO', and you clock in at a certain time, you're paid for those hours, it's not the same if you are a barrister ... you might be paid for one hour, but you might have done five. (SR)

The trickle-down effect of LASPO cuts means that, while those that need to access legal aid continue to rise steadily, the diminishing number of public defenders grows:

The barristers that have left the profession have done the best they can, but we have so many cases to do and so many hours in a day and the consequence of a long time are getting on and on, which just makes it worse for all. (BR)

This also means, that service providers are forced to choose cases they believe will be worth their efforts in terms of hours required for the case and the payment of work rendered:

I'm a senior lawyer, enough to not want to do every case if I don't want to and if I look at a case which is particularly complex, and then I look at what the rate of pay for that case, and I think I'm going to have to work extremely hard to receive the right amount of money compared to what we used to get a long time ago, I won't do it, it's not worth the effort to do it. (BR)

However, the role of service providers is pivotal, as it extends beyond the physical courtroom. Networks of providers exist to ensure litigants have the best possible chances in court. Then there is the public who trust and believe that, as professionals, lawyers will advocate unequivocally on their client's behalf:

The barrister works very closely with solicitors and all of those practising in the field of criminal law now have difficulty. It is difficult for solicitors, who have to prepare cases on behalf of their clients so as to instruct the barristers, but the barristers are in front of the house, we are in the courtroom, we are dealing with the judge, the juries, and the families. We are the ones under pressure in the courtroom, the spotlight is on us and having to make very important decisions in advancing people's cases particularly when we defend them. (BR)

A lawyer is not just a spokesperson; he's actually presenting your case according to the law. So, this comes to the importance of having that lawyer because of the complexity of the law. The judge will explain their decision and their reasons but cannot advise and that throws up some difficulties ... the lawyer also plays that kind of pastoral role as well. (SR)

Respondents pointed out that, anyone could find themselves in a position of either defendant or a victim, and diminishing access to justice would have widespread effects:

Many people who are criticising always think it's never going to happen to them. Anyone can be a defendant, whether you accidentally knocked someone down on your way to work and are charged with dangerous driving, careless driving, then you want a barrister who knows what he's doing, then you want a barrister who can advance your case in front of the jury, you want a barrister who knows all the right legal arguments to run because you want your freedom, because you value your freedom, your family value your freedom. Justice and access to justice are not just for the defendant, but also for the victim, and criminal legal aid is vital to that running, and barristers are vital to the process in which we conduct criminal legal aid work. (BR)

**(e) Vulnerability:** This subsection is a key part of the study. Some argue that recipients of legal aid are vulnerable because they cannot afford to pay for the services of a lawyer. However, in this context, vulnerability is used to show that service providers can be classed as disadvantaged because of the challenges they face as poorly remunerated legal aid providers. It also reflects the nature of the institution that guides their profession



and the damage that has already been done by the LASPO cuts over the years. In addition, respondents reiterated the alarming decline in the numbers of legal aid lawyers and the bleak outlook for newly qualified public defenders in both criminal and civil legal aid:

It is very hard to earn a decent amount without overworking ... you're giving out your soul to your profession and to your clients. (SR)

I think it's a very tough time to become a lawyer. (SR)

Many individuals involved in a court case are therefore opting out of litigation because they lack confidence in the institutions put in place to safeguard their rights and because they do not possess the tools required to bring a claim:

A huge number of people who need legal help, who need legal advice and would fall through. Either they will not bring claims, or they will bring claims, a little bit inadequately because they don't have legal support ... so it fails in that. (SR)

Legal aid service providers believe that they are compelled to speak up against policy makers. They consider justice must be prioritised and seen to be done with the necessary resources:

I think it's inevitable, that we are going to strike, with inflation and the rise in the cost of living ... but even for the next generations of legal professionals coming in, we've kind of set them up to be in a system which doesn't work for them. (SR)

Well, that strike had an impact ... withdrawing our services from cases, everybody knows the backlog of cases is running at sixty thousand (60,000) and in fact, it may well have gone up. The overwhelming feeling is that barristers will not go to court and the impact will be huge because courts will not run; courts will be closed, people will sit in custody and of course, victims will not have their days in court. The government needs to understand, and we are simply asking for proper remuneration for what we've done in fact, over the last 120+ years, we've had a 40 per cent reduction in our fees, and we are just saying the position now is unsustainable. (BR)

However, without the essential resources, service providers will continue to be pushed out of public defence:

So, now you have fewer lawyers on the high street practising criminal law, you have fewer lawyers on the high street practising family law, they just are not there anymore; their firms are closing down, merging so you don't even have the inflow of younger lawyers, so you're losing that expertise. It's happening every day. I think there's just a lack of awareness about the impact of it and I think this is why your research is quite important. (SR)

Justice then becomes selective and only available for those who can afford it:

What happens is people who got the most money can afford to get justice and the rest won't. People like your students, people like your friend, your family, and people from everyone's community who often depend on the legal aid system. It's a two-tier system already in place, it's getting worse. There's the good part of justice; people who pay privately with a lot of money and for the rest on legal aid, it's a very low-quality justice I'm sorry to say. (BR)

This is a crucial point for democracy because justice is something that we deliver to the people. We are far better than that in this country and this criminal justice system represents

our communities at the moment, we are not representing it properly and we are not doing justice to these communities in the UK or in England and Wales, in my view. (BR)

## 8. What about justice for all?

### 8.1 Conclusion

Analysis of the data revealed the significantly adverse impacts of the legal aid cuts on legal aid providers as well as the legal profession itself. This is particularly evident as newly qualified solicitors and barristers struggle to gain crucial experience in a challenging environment. Since 2012, there has been a steady decline in the number of legal aid service providers, as well as a substantial reduction in newly qualified solicitors and barristers registering to join the legal aid provider pool. This trend jeopardises the integrity of the provision. Crucial recommendations to increase remuneration for criminal legal aid solicitors have also been ignored, indicating a clear disparity between the work they undertake and the payment they receive.

Failure to invest in the legal system and other associated sectors, such as youth programmes and healthcare, has been identified as having long-term consequences on the system's ability to serve clients in need. This puts public defence barristers and solicitors at risk of abandoning the profession owing to inequitable remuneration for their labour.

While the participants expressed concerns about the vulnerability of legal aid providers and the potential impact on the justice system, they also acknowledged the increased vulnerability of recipients who have been severely affected by the cuts. These individuals' fundamental rights to free legal representation have been compromised, and their needs have been neglected. The participants' passion for justice was evident, and while many experienced professionals could leave the legal aid sector, their primary concern was for the recipients who would be left without essential and, in some cases, life-saving assistance. Many participants expressed this sentiment while answering questions relating to their vulnerability as legal practitioners.

The responses reveal that unless the current state of the legal aid provision is reviewed, clients and service providers alike will continue to be significantly impacted by the cuts. In addition, the respondents argued that in the current cost-of-living crisis, it is important that governments do more to sustain the provision with guarantees of a fair remuneration policy, and better working conditions for those entering the profession. This will not only benefit service providers, but also legal aid recipients who depend on the quality of service provided, to advocate effectively on their behalf.

The respondents also indicated that service providers are aware of the need for governments to balance their budgets, especially in the face of rising inflation. Nevertheless, they argued that the legal aid provision must not be sacrificed as a result. They emphasised that access to legal aid is critical for a democratic and thriving society where service providers play significant roles that should not be ignored.

In January 2024, the High Court ruled in the Law Society's favour in its judicial review against the Ministry of Justice over its failure to increase criminal defence solicitors' legal aid rates. The court said that the government's decision to ignore the recommendations of the 2021 independent review of criminal legal aid was irrational and misguided. The Law Society president Nick Emmerson has welcomed the decision of the judges

who recommended ‘significant injections of funding’ to prevent a collapse of the legal aid system.<sup>70</sup>

In February 2024 the National Audit Office revealed that both civil and criminal legal aid were in a dire situation because of the failure by government to sustain provision as well as ensuring litigants had access to justice. Key findings included a reduction in government spending on legal aid by £782 million between 2012–13 and 2022–23. It also showed that 40 per cent of family dispute cases were without legal representation between January and March 2023. LASPO 2012 cuts had removed early legal advice for housing and family law creating delays in the resolution process.<sup>71</sup> Until the situation created by LASPO is remedied, legal aid will continue to be a disappearing phenomenon adversely affecting litigants and practitioners alike.

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<sup>70</sup>The Law Society, ‘Our High Court victory: Government Must Rethink Criminal Legal Aid Funding.’ (January 2024). <Our High Court victory: government must rethink criminal legal aid funding | The Law Society> (accessed 14 May 2024).

<sup>71</sup>The Law Society, ‘New National Audit Office Report Shows Legal Aid is on its Knees’ (February 2024). New National Audit Office report shows legal aid is “on its knees” | The Law Society (accessed 14 May 2024).