

# Community Care Legal Aid in England and Wales: Urgent help needed

Dr Jo Wilding

University of Sussex



# Executive summary

1. This report draws on research spanning 2022-2026 on community care legal aid in England and Wales.
2. Community care legal aid covers adults' and children's social care including matters arising under the Care Act 2014 and the Children Act 1989, particularly around the support needs of people with disabilities and decisions of social services. It intersects with mental health law, education, housing, and also covers rights to asylum support.

## Provision and need analysis

3. There has been a serious decline in Legal Help cases in the period 2009-2025, from 8,539 cases started in 2009-10 to 1,636 in 2024-25.
4. Although there is an overall increase in Civil Representation cases, the vast majority of this (89%) is Court of Protection work which has increased from 37 cases in 2014-15 to 2,063 in 2024-25. Civil representation cases for judicial review, by contrast, declined by almost 50% from 474 in 2018-19 to 240 in 2024-25 and 156 in 2025-26 (recognising that the last year's data may be inaccurate due to the LAA data breach).
5. These are not alternative ways of progressing the same case, so the data clearly shows a significant loss of access across most elements of community care law.
6. The vast majority of Legal Help provision is in London and the East Midlands, though the combination of overall shortages and the hyper-specialisation that providers have deployed as a survival strategy means there is no longer any meaningful regional picture, nor any meaningful local provision.

# Executive summary (continued)

7. A high proportion of offices are 'dormant', meaning they undertook no legal aid work in either Legal Help or Civil Representation within any given year. This was 11.5% of offices in 2024-25. In 2025-26, based on only the completion data (as start data remains unavailable), 25% of contracted organisations did not complete any legal aid cases from any of their offices. These proportions are higher than for housing or immigration legal aid.

8. Drawing on proxy indicators of need from the Association of Directors of Adult Social Care (ADASS) surveys, social care statistics, the Index of Multiple Deprivation, previous levels of provision, the accounts of non-lawyer social care support organisations, and lawyer interviewees' accounts of the number or proportion of eligible clients they turn away, it is overwhelmingly likely that a large volume of legal aid need is unmet in England and Wales, leaving some of the most vulnerable people in the country unable to uphold or enforce their legal rights.

9. The research strongly suggests that the Lord Chancellor is failing to fulfil the duty in s1 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act to secure the availability of legal aid in accordance with the Act.

10. The research contradicts the conclusions of the Ministry of Justice 'Deep Dive' as part of the Review of Civil Legal Aid (RoCLA) published in 2025.

## Key findings

11. Many legal aid providers have adopted a survival strategy of hyper-specialising in particular sub-categories of community care work, leaving very little provision for the least financially viable sub-categories.

12. Legal Help work is particularly unaffordable, and most providers avoid taking on cases which are likely to remain on the Legal Help scheme. This is particularly so for those in the private sector, but even not-for-profits' lawyers have to limit the amount of Legal Help work they do.

13. Investigative representation is extremely administratively burdensome, particularly because of Legal Aid Agency caseworkers' limited understanding of community care law.

# Executive summary (continued)

14. Recruitment of a qualified community care practitioner is very difficult throughout England and Wales, especially outside London, and some providers have found it impossible to recruit a supervisor. The supervisor standard is described as difficult to meet, especially in not-for-profits which are cross-subsidising legal aid work with grant-funded projects and are not undertaking the required number of hours in legal casework.

15. The complexity of community care cases is increasing for several reasons including clients having less non-legal support and requiring more support from their lawyer to be able to give instructions; family members becoming more desperate before finding legal assistance; the de-skilling of local authority lawyers making the conduct of cases more difficult; and some local authorities taking a more adversarial approach.

16. The solutions to the crisis are multi-faceted, particularly in advice desert areas: an increase in fee rates alone will not resolve the recruitment and client care crises, for example, but no solutions are viable without a substantial increase in fees to make the work financially viable.

# Summary of recommendations

## **1. Increase legal aid fees**

The fees for both Legal Help and Civil Representation work need to increase significantly. Some other areas of law have received a fee increase because it became apparent that the duty in s1 of the LASPO Act to secure the availability of legal aid in accordance with the Act was not being fulfilled. That is undeniably the case in community care legal aid. The combination of receiving no fee uprating since 1996, a 10% fee cut in 2011, the loss of other areas of law from the scope of legal aid leaving some practices financially unviable, and significant increases in all operating costs including rent, utilities and staffing mean that providers are unable to continue without a fee increase.

## **2. Reduce the escape threshold to double the fixed fee**

Unless the government is willing to abandon the fixed fee, the escape threshold needs to be reduced to double the fixed fee. That has been adopted in immigration law. It means providers' maximum loss per case would be 99% of the amount they were paid, instead of the current 199%, when a case costs just under three times the fixed fee. This would still not entirely fulfil the 'swings and roundabouts' principle unless they completed two cases for half of the standard fee for every one which cost almost double but did not quite escape, but is more manageable than the current situation. This recommendation still requires that the hourly rate for Legal Help is increased.

# Summary of recommendations (continued)

## **3. Separate the core community care and Court of Protection data**

And monitor these separately to ensure that there is a realistic prospect that community care legal needs are being met. Likewise split the children's and adult social care data so that it is possible to monitor these separately. As the data in this report shows, the amount of Civil Representation work outside of Court of Protection cases is very low, but this loss of provision is hidden unless one painstakingly dismantles the data on the Power BI site. There is a need for more intensive monitoring of community care legal need (without requiring the few remaining providers to undertake unpaid monitoring of the cases they turn away).

## **4. Reduce bureaucracy**

As with other areas of law, there is an urgent need to reduce legal aid bureaucracy and the time spent on tasks for which providers are not paid. This currently amounts to a median figure of 15% of an eight-hour working day. There is scope to reduce this bureaucracy or alternatively to pay for the time which is required but currently non-chargeable (and therefore not counted in the calculation of whether a case escapes the fixed fee).

## **5. Invest in training, retention and supervisory support**

Support organisations to remain or expand into community care law by fully funding traineeships, set-up costs for organisations accepting new contracts, and remote supervision and mentoring in-reach to create capacity in new areas.

# Summary of recommendations (continued)

## **6. Develop a clearer understanding of the escalated and shifted costs**

...which occur when people do not receive access to community care legal aid. The National Audit Office has previously criticised the MoJ for lacking a clear understanding of these shifted costs resulting from legal aid cuts. The MoJ should undertake research to build understanding of the benefits of legal advice and representation, and of the shifted and escalated costs when these are not available, to be set against the more obvious costs of providing legal aid.

## **7. Work with the Welsh Government**

...to better understand the shortages of community care (and other) legal aid and the impact of this on the devolved Welsh legislation. This work needs to take a holistic approach to understand the impacts of administrative matters such as the lack of standardised wording for legal aid applications relating to Welsh legislation, as well as the broader implications of lack of case law development, to inform a strategy for overcoming the shortage of provision.

## **8. Deploy the powers in LASPO s2**

An overarching recommendation is that the MoJ should explore ways of exercising the powers in LASPO s2 to make alternative arrangements (such as grants) to secure provision of community care legal aid in line with the duty in LASPO s1.

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# List of acronyms

|              |                                                                       |
|--------------|-----------------------------------------------------------------------|
| <b>CoP</b>   | Court of Protection                                                   |
| <b>JR</b>    | Judicial review                                                       |
| <b>LAA</b>   | Legal Aid Agency                                                      |
| <b>LASPO</b> | Legal Aid, Sentencing and Punishment of Offenders Act 2012            |
| <b>MoJ</b>   | Ministry of Justice                                                   |
| <b>PAP</b>   | Pre-Action Protocol letter (required before starting judicial review) |
| <b>RoCLA</b> | Review of Civil Legal Aid                                             |

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# Background

This report aims to give a clearer picture of community care legal aid provision and demand in England and Wales, including whether and where there may be unmet need, for what kind of legal advice or representation. It is based on research between 2022-2026 at the University of Sussex.

It aims to demonstrate what gaps exist and why, and concludes with recommendations for increasing the amount and distribution of provision in England and Wales, to better meet the need. It first explores the data on provision of legal aid work, then the available data and proxies for understanding community care legal aid need, before setting out a more regionalised picture. It then details key themes arising from the qualitative and quantitative data collected through the project.

Community care legal aid is, like most areas of law, divided into two main 'schemes', namely Legal Help and Civil Representation. Broadly speaking, Legal Help assists with pre-court matters including advice, while Civil Representation covers representation in court, including judicial review and the Court of Protection. Alongside these, 'Investigative Representation' is available for cases where it is not possible to move from Legal Help onto Civil Representation without additional work and incurring disbursements such as obtaining counsel's advice on legal matters which are unclear.

# Background (continued)

Only offices which hold a contract with the Legal Aid Agency (LAA) for community care law (or public law for judicial reviews) are permitted to do legal aid work in community care. That means we can be sure that the legal aid data captures all providers of community care legal aid work, though some other organisations (mainly disability charities) offer related support and advice, including assistance to find a legal aid provider.

As with most other areas of civil legal aid, fees have not increased since 1996 and were cut by 10% in 2011. Since 2007, providers receive a fixed fee for Legal Help work: £266 for Community Care and £259 for Public Law cases.<sup>7</sup> Providers will only 'escape' that fixed fee if they bill for (and have accepted on assessment) more than three times the amount of work the fixed fee covers, known as the 'escape threshold'. This means they may lose almost twice as much as they are paid on any Legal Help case, if their total (accepted) work is just below the escape threshold.

Community care legal aid was essentially unchanged under the LASPO Act: all matters remained in scope although, as for all judicial review work, the permission stage of judicial review was placed at risk, with providers paid for all pre-permission work only if permission is granted.

Nevertheless there has been a significant drop in community care legal aid work for everything other than Court of Protection work, which cannot be explained by a drop in need.

The Review of Civil Legal Aid (RoCLA) included what it called a 'Deep Dive' into community care law, concluding that it is thriving. The flaws in that review and conclusion are discussed throughout this report.

# Methodology and data sources

The data informing this report comes from two projects, named the Social Welfare and Immigration Legal Aid Mapping project (SWILAmap)<sup>2</sup> and the Community Care Legal Aid Demand and Provision project (CC-LADAP). Both projects received ethical approval from the University of Sussex. The data consists of:

- Quantitative data from Freedom of Information responses, legal aid annual statistics and the Legal Aid Agency's Power BI dashboard.
- Semi-structured interviews with ten solicitors or practice managers and three barristers undertaking community care work in England and Wales, plus one key informant from a relevant charity.<sup>3</sup> These are attributed in the report as SWI- and LADAP- plus the interview number.
- One focus group discussion including three further solicitors and one barrister.
- Four semi-structured interviews with legal aid users who had a community care or social care issue (out of 56 advice-user interviews in total in the SWILAmap research). These are attributed in the report as LAU- (Legal Advice User) plus the interview number.
- 560 funding applications to the Access to Justice Foundation from 365 applicants across four funding rounds, which were thematically analysed with a view to better understanding the state of the not-for-profit legal advice sector. 84 of the applications (not 84 separate organisations) made reference to community care issues as part of their legal advice and support work.

# Provision data, England and Wales

Adding together the overall figures for legal aid provision, one could assume that there was somewhat consistent provision, recovering after a dip. However, when isolating the matter types, it becomes clear that Civil Representation, and particularly Court of Protection (COP) work, have increased to a much higher proportion of the overall volume, while Legal Help cases have substantially declined such that there are certain types of cases which are simply not being undertaken. This conclusion is supported by the interview data from legal aid providers.

For community care Civil Representation work as a whole, the number of grants and applications increased significantly from 2007 to 2026, with a drop in the most recent year:<sup>4</sup>

| Financial year | Civil Representation grants |
|----------------|-----------------------------|
| 2007-08        | 735 grants                  |
| 2016-17        | 1,335 grants                |
| 2024-25        | 2,320 grants                |
| 2025-26        | 1,401 grants*               |

Table 1: Grants of community care Civil Representation, 2007-08 to 2025-26

\*Data as published by LAA for the year to March 2026. This is not marked as incomplete due to the data breach, but that may have affected the published information.

# Provision data, England and Wales (continued)

Over the slightly shorter period which the data covers for Legal Help (2019-2025) the figures go the opposite way:

| Financial year        | Matters started |
|-----------------------|-----------------|
| 2009-10               | 8,569           |
| 2010-11 (10% fee cut) | 5,629           |
| 2012-13 (pre-LASPO)   | 4,977           |
| 2013-14 (post-LASPO)  | 3,274           |
| 2024-25               | 1,636           |

*Table 2: Community care Legal Help matters started, 2009-10 to 2024-25. Start data for 2025-26 is not available at the time of writing, due to the data breach delaying publication.*

There was a notable drop in 2013-14 on the previous year's figure despite not being directly affected by the LASPO Act cuts, and that figure fell further, by more than half over the next decade. The LAA had not published the data for matters started in 2025-26, at the time of writing this report, but completions in the year stood at 1,117, which represents a 23% decline compared with the 1,448 completions in 2024-25.

The figures are directly comparable, unlike in other areas of law, since the same range of matters remain in scope. Although the Care Act 2014 changed some elements of the law, it did not affect all aspects of community care legal aid work and cannot account for the severity of the decline.

There will be some overlap, where one person had both a Legal Help and a Civil Representation matter in the same year, but this is not traceable through the data, so these combined figures represent the maximum number of people assisted on community care legal aid.

# Legal Help cases

In England and Wales as a whole, we can obtain a detailed breakdown of the types of work done on Legal Help in each year. There is no reason to believe that demand or need has reduced in any of these categories. The data for 2025-26 is only available as completions, not new case starts, therefore is shown in brackets here; in the previous year, completions were around 90% of starts.

Charges for services matters started went down from 166 in 2010-11 to 17 in 2024-25 (and 19 completions in 2025-26)

Issues arising from the health / social care divide matters started went down from 59 in 2010-11 to 9 in 2024-25 (and 11 completions in 2025-26)

Obtaining an assessment matters started went down from 1,998 in 2010-11 to 1,090 in 2013-14, 586 in 2024-25 (and 268 in 2025-26)

Challenging an assessment matters started are relatively stable, going from 396 in 2010-11 to a low of 203 in 2021-22 up to 413 in 2024-25 (and 421 completions in 2025-26)

Protection of vulnerable adults matters started went down from 173 in 2010-11 and 178 in each of the next 2 years to 34 in 2024-25 (and 51 completions in 2025-26)

Provision of direct payments or equivalent matters started went from 97 in 2010-11 up to 129 in 2012-13 and then fell to 67 in 2014-15 and continued falling to 14 by 2024-25 (and 13 completions in 2025-26)

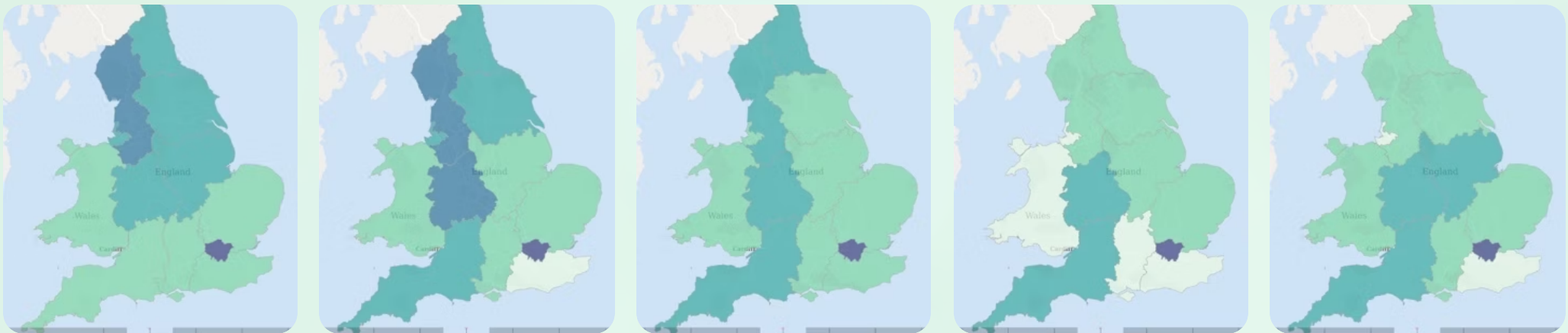
Provision of services matters started went down from 1,896 in 2010-11 to 1,215 in 2013-14, 315 in 2024-25 (and 260 completions in 2025-26)

'Other' Legal Help matters started fell from 904 in 2010-11 to 356 in 2013-14, 94 in 2018-19, 60 in 2024-25 (and 59 completions in 2025-26). Although reductions in an 'other' category can result from better recording of specific categories, there is no corresponding increase in any other categories.

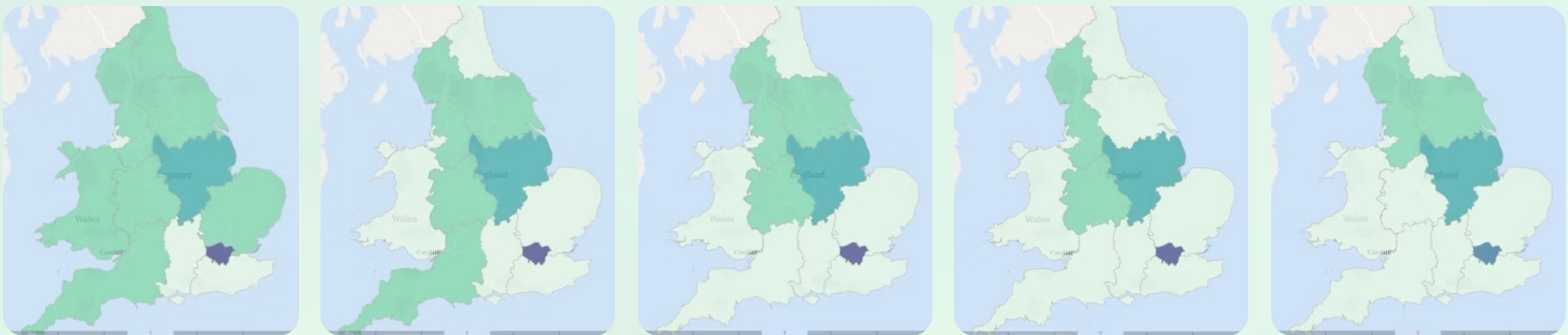
# Time-series mapping the Legal Help decline

The provision maps on this page show the decline in Legal Help provision across England and Wales from 2010 to 2024, by Legal Aid Agency procurement area.<sup>5</sup>

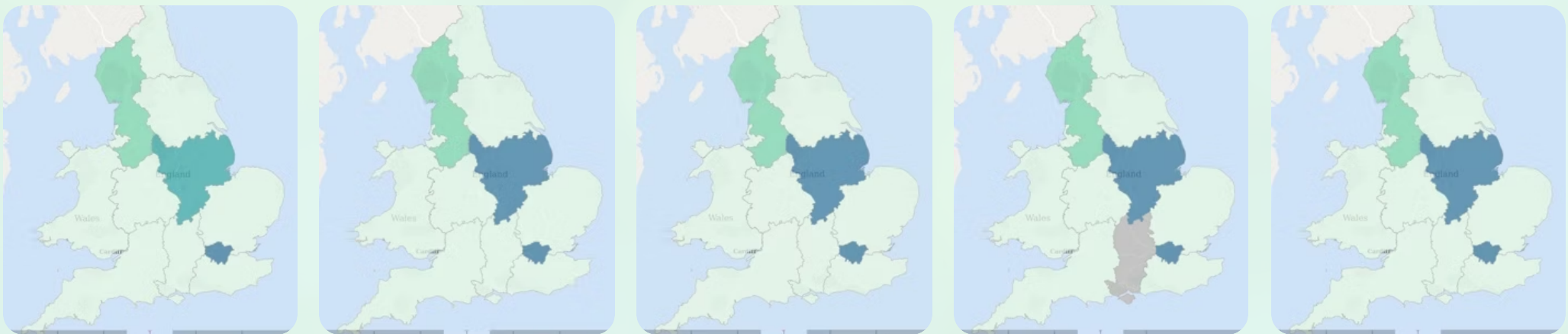
## 2010-2014



## 2015-2019



## 2020-2024



# Civil Representation cases

Civil Representation work has increased, as an overall figure, but the increase comes from Court of Protection work and conceals a decline in judicial review work. There are two figures for each sub-category of Civil Representation work, representing the (larger) number of applications for funding and the (smaller) number of grants agreed by the Legal Aid Agency. Here, for the sake of clarity, I use the number of grants made.

Court of Protection (non-medical) grants increased from 2 in 2012-13 (first year in which it appears in the data) and 34 in 2014-15 to 648 in 2024-25

Court of Protection (medical) grants increased from 2 in 2014-15 to 18 in 2024-25

Court of Protection (deprivation of liberty) grants increased from 1 in 2014-15 to 1,397 in 2024-25

Overall, Court of Protection grants across the three categories increased from 37 cases in 2014-15 to 2,063 in 2024-25.

The opposite trend appears overall in Civil Representation for judicial review, though a change in judicial review recording categories means we need to compare two sets of figures together:

Judicial review (with no further qualifiers) went from 578 grants in 2006-07 to a high of 901 in 2008-09, then declines steadily to 465 in 2015-16, before falling steeply to 14 the next year, with no new grants from 2020-21 onwards.

Judicial review (community care) went up from 7 in 2013-14, peaking at 474 in 2018-19 and following a largely downward trend to 240 in 2024-25 and 156 in 2025-26.

Other judicial review qualifiers (such as housing, enforcement, Upper Tribunal judicial review, and judicial review appeals) each have very small numbers (fewer than one per year on average) and do not make up the decline from the undifferentiated category.

# Civil Representation cases (continued)

| Code 1 description                                                 | Volume of grants (2025-26) |
|--------------------------------------------------------------------|----------------------------|
| Court of Protection -Deprivation of Liberty - Community Care       | 1314                       |
| Court of Protection non-medical - Community Care                   | 726                        |
| Judicial Review - Community Care                                   | 156                        |
| Court of Protection medical - Community Care                       | 13                         |
| High Court-withdraw/withhold life sustaining treatment (parent/PR) | 4                          |
| Court of Protection non-medical - Appeal - Community Care          | 1                          |
| Court of Protection-withdraw life sustaining treatment (parent/PR) | 1                          |
| Discrimination - Community Care                                    | 1                          |
| Judicial Review- Appeal - Community Care                           | 1                          |
| Upper Tribunal Judicial Review - Community Care                    | 1                          |

Table 3: Grants of Civil Representation by community care sub-category, 2025-26

Some community care judicial review work is undertaken on public law contracts. We therefore need to look at the judicial review data as well, to see whether this might make up some or all of the decline described above. We can however see from the judicial review data<sup>6</sup> that there were 51 community care judicial reviews lodged in 2025 (down from 80 in 2010) and an additional 119 judicial reviews which may have been related to community care in the 'Family, children and young persons' category (also a decline from 152 in 2010), which suggests there is not a significant amount of community care work being done on public law contracts outside the realms of community care provision.

# Community Care work under other legal aid categories

The Legal Aid Agency's Category Definitions allow for some crossover between community care law and the public law and mental health categories.

Judicial review challenges and pre-action work in community care can be undertaken on either contract, but only where a judicial review point exists. However, public law provision is precarious because of the at-risk nature of judicial review funding, explored elsewhere in the report.

Mental health legal aid lawyers explained that they undertake community care work under their mental health contracts, typically where a patient leaving hospital (having been detained under certain sections) is entitled to aftercare from the local authority and / or Integrated Care Board under s117 of the Mental Health Act, and Court of Protection work could often be done on either community care or mental health contracts. It is not possible to extract the community care work from the published data on mental health legal aid.

However, it is important to note that mental health legal aid provision is also precarious at present, and there is a risk of a further loss of community care capacity as mental health provision declines. Mental health lawyers said that some firms already do not do s117 aftercare work but simply open a file, do the tribunal hearing and then close the file, neither dealing with the right to aftercare nor following up on enforcing that right, because doing the work is financially unsustainable.

# Dormant offices

There are some provider offices which hold a legal aid contract for community care but have not in fact opened any legal aid cases within the year covered by the data. I refer to these as 'dormant' contracts. These occur across all categories of legal aid and most often occur because the provider organisation loses or is unable to recruit a suitably qualified practitioner, particularly a supervisor or a self-supervising solicitor or caseworker, on the salary they can afford to pay. This is all the more difficult in areas which are already advice deserts, since there are few or no qualified practitioners to move between organisations, or supervisors to train new practitioners. It also happens when an organisation decides to stop doing legal aid work in a particular area of law because of the financial losses, either moving its staff into privately paying work in the same area of law or into adjacent areas of law.

A housing solicitor from a not-for-profit explained that, 'We don't actually have anyone in community care really at the moment, even though we have a contract.' [SWI-19] Another housing solicitor in a not-for-profit described having hoped to expand into community care law, which was much needed locally:

It would have been looking to get someone on board to do community care. Could we financially do that? That would be a big cash injection upfront before we would even see anything from legal aid on community care cases. So I think that we would have been looking at probably, maybe a month or so's worth of hard graft to try and get something in place, all the boxes ticked ready to go. Then getting the sign off by the trustee board, saying to them we might need probably, maybe £80,000. £40,000 for the lawyer for the year and then the other £40,000 maybe as a buffer. Then they're going to look at the housing and go well, your rates on housing are x, you're not getting x amount of money in so how do you expect to do that on community care? They'd be absolutely right. I can't deny that. [SWI-20]

# Dormant offices (continued)

In community care, the dormancy rate for 2024-25 was 11.5% or 14 out of 106 offices, (excluding those which were new or which withdrew during the year) which did not start any legal aid cases.

In the absence of Legal Help case start data for 2025-26, the completion data shows 29% of offices (34 out of 117) did not complete any legal aid work within the year and 25% of organisations (19 out of 75) completed no legal aid cases in any of their offices.<sup>7</sup>

For comparison, in immigration in 2024-25, it was 5% (10 out of 198 offices, excluding those which were new or which withdrew during the year).

In housing, it was 5% (19 out of 358 offices, excluding those which were new or which withdrew during the year).

In welfare benefits, it was 37% (10 out of 27 offices, excluding those which were new or which withdrew during the year). The scope of legal aid work for welfare benefits is extremely narrow, since LASPO, so the high dormancy rate there derives from the very limited work which can be done.

# Regional provision picture

The overall provision data can also be broken down region by region, to indicate where there are likely to be geographical gaps in provision. This data comes from the annual legal aid statistics, which gives the number of Legal Help and Civil Representation matters opened by each provider office.

The most recent year for which complete data on matters opened is available is April 2024 to March 2025 (shortly before the LAA data breach was discovered).

| Region         | Legal Help | Civil rep |
|----------------|------------|-----------|
| East Midlands  | 708        | 162       |
| Eastern        | 19         | 23        |
| London         | 601        | 426       |
| Merseyside     | 46         | 7         |
| North West     | 90         | 281       |
| North East     | 2          | 161       |
| South          | 1          | 36        |
| South East     | 10         | 96        |
| South West     | 20         | 255       |
| Wales          | 43         | 69        |
| West Midlands  | 47         | 233       |
| Yorks & Humber | 29         | 571       |
| Total          | 1624       | 2320      |

Table 4: Breakdown of Legal Help and Civil Representation matters opened, by LAA procurement area, 2024-25

# Regional provision picture (continued)

As can be seen in Table 4, the procurement areas do not exactly match the standard regional boundaries (Merseyside is separate from the North West and the South and South East are separated) but they are broadly similar. The figures for 2023-24 are somewhat similar and the corresponding table for that year is an Appendix 1.

Legal Help provision is very small in the North East, with just two cases opened in the region, and in the South and South East combined (11), the East of England (19) and South West (20). The East Midlands has far the largest Legal Help provision, almost entirely by two firms, Bhatia Best and Luke and Bridger Law. While these firms will take on some work from outside the procurement area, there is a serious dearth of local provision anywhere except London and the East Midlands, with just 315 Legal Help matters opened across the entire rest of England and Wales.

For Civil Representation, the picture is different, with both a higher number of cases opened overall and a more even spread between the regions. Yorkshire and the Humber and London have the highest provision numbers although, as set out above, 2063 out of the total of 2320 Civil Representation cases (89%) were Court of Protection cases, rather than what providers and support organisations describe as 'core' community care work.

Provision appears critically low in the East of England and limited in Wales. The East of England provision consists of three firms, one of which undertook almost all of the Civil Representation work but no Legal Help (in Cambridge) and another which undertook most of the Legal Help work, in Luton. There were no providers at all in Norfolk or Suffolk and, while the Legal Aid Agency is not attempting to procure legal aid at the county or local authority level, this does leave a large area of the region in which face-to-face assistance is unlikely to be available. Although home visits are possible, legal aid providers are paid only half of the standard hourly rate for travel time, so it is unlikely that many will travel to coastal Norfolk, for example.

# Regional provision picture (continued)

| Fin. year | Local authority | Region  | Legal Help | Civil rep |
|-----------|-----------------|---------|------------|-----------|
| 2024-25   | Cambridge       | Eastern | 0          | 19        |
| 2024-25   | Colchester      | Eastern | 4          | 1         |
| 2024-25   | Luton           | Eastern | 15         | 3         |

Table 5: Provision of Legal Help and Civil Representation, East of England procurement area, 2024-25

For Wales, there is very limited provision across the vast majority of the country. Cardiff and the Vale of Glamorgan, both in the far south, share extremely limited Legal Help provision but some Civil Representation. Gwynedd, in the North West, has the bulk of the provision for Wales, while there is none at all in the north east, south west, nor the entire middle part of Wales. Again, while some work may be done outside the procurement area, the poor transport links and poor online connectivity even for those who find remote provision suitable may make this provision inaccessible to most.

| Fin. year | Local authority   | Region | Legal Help | Civil rep |
|-----------|-------------------|--------|------------|-----------|
| 2024-25   | Cardiff           | Wales  | 2          | 37        |
| 2024-25   | Vale of Glamorgan | Wales  | 0          | 1         |
| 2024-25   | Gwynedd           | Wales  | 41         | 31        |

Table 6: Provision of Legal Help and Civil Representation, Wales, 2024-25

# Regional provision picture (continued)

Only 15 out of 33 London boroughs had any Legal Help provision in 2024-25, and the same number (though not all the same boroughs) had Civil Representation provision of any sort.

Within the North East, provision of Legal Help was extremely low, while the Civil Representation provision available was concentrated in Darlington. There is no provision at all in Northumberland, above Newcastle upon Tyne, and none in Redcar and Cleveland or Hartlepool.

| Fin. year | Local authority     | Region     | Legal Help | Civil rep |
|-----------|---------------------|------------|------------|-----------|
| 2024-25   | County Durham       | North East | 0          | 8         |
| 2024-25   | Darlington          | North East | 2          | 112       |
| 2024-25   | Newcastle upon Tyne | North East | 0          | 23        |
| 2024-25   | Stockton-on-Tees    | North East | 0          | 18        |

Table 7: Provision of Legal Help and Civil Representation, North East procurement area, 2024-25

The North West faces a similar picture with the available provision concentrated in pockets, and no provision at all in Cumbria, the northernmost part of the region, much of which borders the corresponding advice desert of Northumberland in the North East, or Scotland, which has a separate legal aid system, or the sea, meaning they are particularly isolated from legal assistance.

For the South and South East, there is no provision at all in the counties of Berkshire, Oxfordshire, Buckinghamshire, or Surrey nor on the Isle of Wight. Legal Help provision is extremely limited across the region, with only pockets of Civil Representation provision in Maidstone, Southampton and West Sussex.

# Regional provision picture (continued)

| Fin. year | Local authority   | Region     | Legal Help | Civil rep |
|-----------|-------------------|------------|------------|-----------|
| 2024-25   | Portsmouth        | South      | 1          | 0         |
| 2024-25   | Southampton       | South      | 0          | 36        |
| 2024-25   | Brighton and Hove | South East | 8          | 2         |
| 2024-25   | Crawley           | South East | 0          | 20        |
| 2024-25   | Maidstone         | South East | 2          | 74        |

Table 8: Provision of Legal Help and Civil Representation, South and South East procurement areas, 2024-25

The full regional breakdown table is included at Appendix 2.

# What is community care law?

Community care legal aid covers 13 distinct issues and, unlike areas of law like housing, immigration or welfare benefits, does not hold an obvious or instinctive meaning for most people. As one lawyer put it,

There isn't a sense of having rights in community care, it's kind of a fairly meaningless phrase. So what's community care? It's a kind of franchise category ... but it's not something in common parlance at all, you know, linguistically - and also because you're the claimant, you have to proactively [do something], whereas in housing, if you're on the receiving end, you're more likely to go and do something and also have more of a sense of maybe having some sort of rights. LADAP-07

This is exacerbated by the loss of local community care practices which means that people simply do not find community care legal aid lawyers who can help them. Some go to MPs, whose caseworkers may also be unaware of community care lawyers because there are none in the area, or may simply be unable to find one to refer them to.

It covers social care for both children and adults.

# Children's social care

Typical cases for children and young people include

- A child or young person lives with a parent and the local authority is (arguably) not meeting its care duties. Here a difficulty arises because a child can have Civil Representation in their own right but not Legal Help. That means the parent can be the client at Legal Help stage, but only if they fall below the very low means test to qualify.
- A child in local authority care who objects to the local authority's planning for their future care. A children's social care lawyer described a case where the pre-teenage child had been severely neglected by the parent and sexually abused by another adult who had access to their home. The child was placed in foster care, with the local authority proposing to reunite them with the parent who neglected them, which the child adamantly opposed.
- A child aged 16 or 17 who is homeless, where the local authority is resisting providing them with a home and support in accordance with Section 20 of the Children Act. A lawyer described this as 'enforcing the duty and then the consequent obligations to provide needs assessments, care plans, social workers and suitable accommodation and support.' This might continue when the child turns 18 with 'ensuring that the duties and requirements around providing them support as care leavers is properly approached.'
- A young person who has turned 18 and who should have been, but was not, provided with home and support under the Children Act and therefore should now be recognised as a care leaver. These are sometimes described as 'retrospective care leavers'. This challenge can be undertaken as a judicial review, which a lawyer described as more 'attractive' for those in private practice. However, the lawyer explained there is frequently also a need to 'supervise' to 'mak[e] sure they do their job properly, which then moves you on to a Legal Help, [and] is a far less attractive proposition.'

# Children's social care (continued)

- Provision of support for care leavers who are recognised as care leavers, covering those aged 18-25. A lawyer gave an example of an 18-year-old who was accepted to be a care leaver, who was happy and flourishing in the placement where she had been living for the last four years, with a loving and trusting relationship with the adults around you, but the local authority intended to move her out of that placement. The lawyer was challenging this by way of judicial review as an irrational and unlawful care plan and assessment.
- A child or young person seeking asylum, whose age is disputed by a local authority or the Home Office, meaning they are not treated as a child and are placed in adult accommodation or even immigration detention instead of local authority care.
- Intersecting with criminal law, children's social care might also include the suitability of arrangements for a child or care leaver who was applying for parole, ensuring that there's suitable accommodation if the child is on remand and awaiting sentence, or in the context of decisions on whether or not to prosecute and 'ensuring that the CPS and the police are fully aware of the complexity of the child's needs as a result of adverse childhood experience.' The latter might require a judicial review challenge or an abuse of process application within the criminal justice system.

# Adult social care: 'Core' vs COP

An interviewee explained the difference between 'core' community care and COP work:

What is 'core' community care? Care Act challenges where a local authority is breaching a public law duty to carry out assessments correctly, provide services, consult on changes to services, provide care packages – this now includes ICBs, health boards and commissioners who manage domiciliary care contracts. Whereas ... the Court of Protection make best interests decisions not lawfulness decisions. So it's not a finding that the local authority have done something wrong but it's reaching agreement on what would be best. [SWI-02]

COP work is clearly not, therefore, an alternative strategy for undertaking the same matter that could have been progressed as a judicial review; they are clearly different cases. Given there is a merits test before applications for Civil Representation will be granted, the CoP matters taken on are certainly meritorious, and represent meeting a genuine and eligible need. However, this was also the case for the judicial review matters which were previously undertaken, so the drop is overwhelmingly likely to mean that the need continues to exist but is not being met.

A law centre manager explained their organisation's decision to move from core community care work into Court of Protection:

We'd started to move towards doing Court of Protection work because that seemed the best way to actually find some work that paid at a reasonable rate... [Our community care lawyer] was initially doing a mix of judicial review and Legal Help work, but then in the last sort of year or two she was definitely moving towards Court of Protection work. [SWI-29]

Another explained that, both in private firms and not-for-profits, there was rarely be an explicit decision to abandon Legal Help work and reduce judicial review work in favour of COP cases. Rather, each individual would have billing targets which were easier to meet with COP work, which resulted in higher overall payments, less at-risk work, less administrative burden, a generally slower pace and less urgency than judicial review work, and also allowed for payments on account.

It is therefore undeniable that judicial review and some sub-categories of Legal Help work have dramatically declined despite remaining within the scope of legal aid and in the absence of any indication of changes which were likely to have reduced need so substantially across England and Wales as a whole.

# Indicators of need

It is much more difficult to estimate community care legal aid need than it is for asylum and immigration or for housing possession cases, because there is no baseline figure for the underlying number of likely instances of community care need.

## Previous levels of provision

As above, the previous level of provision is an indicator of a minimum level of likely need, in the absence of any evidence that need would have reduced (such as evidence of significantly improved assessment countrywide or a substantial narrowing of people who would be eligible for the underlying community care rights).

## Social care statistics

One possible indicator is the Adult Social Care (ASC) statistics on adults who have been assessed by their local authority in the 12 months prior, but are not receiving services. While many of these may not need services or may be ineligible to receive them free (or ineligible for legal aid), this gives an indication of possible numbers of adults who may need advice on the adequacy of the assessment or to challenge the lack of service provision.

| Region             | Number of people assessed in last 12 months and not receiving services |
|--------------------|------------------------------------------------------------------------|
| East Midlands      | 4,355                                                                  |
| East of England    | 5,010                                                                  |
| London             | 5780                                                                   |
| North East         | 2830                                                                   |
| North West         | 7685                                                                   |
| South East         | 6,800                                                                  |
| South West         | 4,165                                                                  |
| West Midlands      | 6,635                                                                  |
| Yorkshire & Humber | 4,950                                                                  |

Table 9: Number of people receiving ASC assessments, who have not received local authority long-term support in the previous 12 months, March 2025. Source: DHSC Adult Social Care statistics, <https://www.gov.uk/government/statistics/adult-social-care-in-england-monthly-statistics-july-2025>

# Indicators of need (continued)

The Welsh government statistics do not record identical data but in the financial year April 2024 to March 2025, Welsh local authorities carried out 65,233 assessments for adult social care.

As for children's social care, the data records a bare number of assessments, not the number who did or did not receive services.

| Region             | Number of assessments carried out by children's social care services, 2024-25 |
|--------------------|-------------------------------------------------------------------------------|
| East Midlands      | 51,500                                                                        |
| East of England    | 44,840                                                                        |
| London             | 103,560                                                                       |
| North East         | 37,420                                                                        |
| North West         | 96,149                                                                        |
| South East         | 124,714                                                                       |
| South West         | 50,040                                                                        |
| West Midlands      | 65,180                                                                        |
| Yorkshire & Humber | 68,150                                                                        |

Table 10: Number of assessments carried out by children's social care services, England, 2024-258

# Social care survey data

Other evidence identifies important trends which indicate the likely trajectory of need.

The twice-yearly surveys by the Association of Directors of Adult Social Services (ADASS) provides valuable data in that regard. The spring 2024 iteration showed that, although most requests for adult social care come from within the community, those arising from discharges and assessments from hospitals had increased by more than 10% (for 45% of Directors in 2024 and 78% in spring 2025). The number of people previously but no longer eligible for Continuing Healthcare (CHC) had increased by more than 10% (for 36% of Directors in 2024 and 75% in 2025). Additionally in 2024 80% saw an increase in mental health presentations, 60% in rough sleepers, 60% in domestic safeguarding referrals, all of which might increase demand on social care services and therefore on social care legal assistance.

The autumn 2025 iteration refers to pressures on budgets which indicate an increased risk of unlawful actions or omissions by councils which are forced to gatekeep, with projected overspends increasing, while the Spring 2025 iteration identifies increasing numbers of requests for social care and support: '2024/25 was the second year when requests for support exceeded 2 million, equivalent to 5,700 requests every day of the year.' P26 Compared with 2015/2016 this was 31% higher amongst working-age adults, and 9% higher amongst older adults.

## Index of Multiple Deprivation

While these numbers give an indication of the size of the 'pool' from which legal need would likely have resulted, they lack any real nuance for deducing a precise amount of need. Another useful indicator of likely relative, if not absolute numerical, need is the Index of Multiple Deprivation. Covering all of England and Wales, it has seven 'domains', two of which are Health Deprivation and Disability, and Income Deprivation.<sup>9</sup> These indicate, respectively, where there is likely to be a high level of need, derived from disability, alongside eligibility for both services and legal aid, based on income deprivation. This was the indicator we adopted for the SWILAmap project.

# Other research data

The Kings Fund found that requests for support increased by 10% between 2015/16 and 2022/23 while 2.1% fewer people could access support. In these circumstances it is inevitable that legal need is higher than in 2015, even if those in need never present to a legal aid lawyer.

Access Social Care's July 2025 State of the Nation report found various unlawful communications or strategies by local authorities that appear to be aimed at gatekeeping their services. This included telling unpaid carers that their care work is 'what they would be doing anyway', when the Care Act 2014 requires the assessment to be 'carer blind' without assumptions about the availability of an unpaid carer; telling people before the assessment that they will have to pay a very high charge for their care, to deter them from taking up an assessment; or making purported charging decisions before the assessment. This too feeds into community care legal need, whether or not it manifests as such, as these unlawful acts and strategies should be challenged.

While it is difficult to create a numerical estimate of need, the figures for adult social care and the mapping of deprivation, taken together with the serious decline in non-CoP provision, give a very strong indication that there is a high volume of unmet community care legal aid need throughout England and Wales. Even if we assume that remote access is both available and appropriate, the very low level of provision, compared with earlier years, suggests that remote access could do no more than shuffle the limited provision, rather than actually meet the level of need.

# Accounts given by support organisations

We analysed a total of 560 funding applications for grants for advice provision from the Access to Justice Foundation (ATJF), from 365 separate applicant organisations across four funding schemes over a 17-month period in 2022-24. These were thematically analysed with a view to better understanding the state of the not-for-profit legal advice sector.<sup>10</sup> In total 84 of the applications (not 84 separate organisations) made reference to community care issues as part of their legal advice and support work.

Several of these are disability-focused organisations, children's organisations, or broader welfare organisations with a focus on a specific user group like travellers, prisoners or speakers of a particular language. Others were law centres seeking additional funding alongside legal aid contracts, and several were generalist advice organisations like Citizens Advice branches. The specialist organisations which applied (or specialist projects within more generalist organisations) frequently took a more holistic approach to supporting a specific group of people, who could not have accessed the full range of these services via legal aid given the tightly restricted legal issues which legal aid providers are able to cover, and instead had to depend on charity to address some parts of their problem.

For example, a charity for families of children with life-limiting conditions offers benefits, housing and community care law for that client group; a second, supporting people with a specific medical condition, covers employment, disability discrimination, goods and services, community care and welfare benefits; while others offer benefits advice for terminally ill people or people with a cancer diagnosis, helping to address the removal of legally aided access to welfare benefits legal advice. This, however, leaves the organisations heavily or wholly dependent on charity – particular in light of local government funding cuts, or for those whose client group is not geographically defined.

Even the organisations which had legal aid contracts (across all areas of law) were only receiving an average of 16% of their income from legal aid work, whereas grants from trusts and foundations averaged 48% of the income for the 154 organisations in the funding round where this income source breakdown was requested in the application.<sup>11</sup>

# Flaws in the MoJ 'Deep Dive' into community care legal aid

The MoJ conducted a 'deep dive review' into community care law during the Review of Civil Legal Aid (RoCLA) and concluded that there were no significant problems.<sup>12</sup> However, the review misinterpreted some data and failed to adequately examine other issues. Flaws in the review, which are addressed in this report, include the following:

- The review shows income from community care legal aid at different firm sizes and income by region, but reveals nothing about how many cases were done and of what type. This is an important oversight because it conceals the switch from 'core' community care work to CoP. [See Provision data]
- The review contains no breakdown of the kind of work being undertaken, other than to tabulate the split between Legal Help, controlled work and Civil Representation.<sup>13</sup> [See Provision data]
- The review details the number of solicitors in firms and their age breakdown but it does not give a breakdown of how many supervisors there are within that cohort, which is one of the key obstacles for legal aid contract holders. [See Recruitment and Supervisor standard]
- The review refers to those contract holders who have 'submitted at least one final community care bill in the year shown and held a community care legal aid contract at the end of the year' and also the 'leavers'. It says nothing about the dormant contract holders who hold contracts but have not done any legal aid work in the year. These are an important part of the picture since they have bid for contracts with the (presumed) intention of doing legal aid work but have encountered some barrier which means they are not doing so. [See Dormant contracts]
- The review states that community care had an 'overall decrease [in provider numbers] of 6% seen between FY2014-15 to FY2021-22. This is smaller than the overall decrease of 22% for all active civil legal aid firms.' However, Table 11 shows that the number of offices fluctuated significantly 152 to 98, or 36%. The review also notes the presence of 'a large proportion of community care firms (17% to 36% each year) that did not have a contract at the end of the year in which they billed' (p7) This implies not stability but significant churn in the provider base, which indicates potential problems.

# Flaws in the MoJ 'Deep Dive' (continued)

| Date                             | Number of contracted offices |
|----------------------------------|------------------------------|
| January 2016                     | 138                          |
| September 2018                   | 152                          |
| September 2019                   | 156                          |
| August 2020                      | 135                          |
| September 2021                   | 127                          |
| July 2022                        | 115                          |
| August 2023                      | 98                           |
| October 2024 (after main tender) | 121                          |
| August 2025                      | 117                          |

Table 11: Contracted office numbers for community care law. Source: Legal Aid Agency Directory of Providers; author's own archive

- The review notes a 335% increase in income from community care legal aid over the period compared with 4% for all income from civil legal aid. It also notes an increased proportion of firms receiving 80% or more of their community care income from Civil Representation. This again results from the large scale abandonment of Legal Help work in favour of CoP cases, which the review fails to identify. [See Provision data and Financial unviability of community care legal aid]

This report aims to demonstrate why the overall conclusion of the 'Deep Dive' review, that community care legal aid is not facing serious problems, is deeply flawed and itself unsustainable.

# Key findings: A serious shortage of provision

Support organisations, non-legal aid providers and providers in other areas of law emphasised the severe lack of access to community care legal aid provision for anything except Court of Protection work. For example, a discrimination specialist explained that they frequently needed to refer disabled clients to community care lawyers, because the Equality Act does not oblige landlords to make adaptations but the Care Act does.

But then the clients come back to us and say we can't find a community care solicitor. They don't exist. In the thousands of cases that we've dealt with, and I've been here six years now, we've had three cases where other providers have willingly took on the client's case and supported them because there's interlocking matters. SWI-16

This leaves the organisation to deal with the parts of the problem that they can, while other parts of the problem remain unaddressed, despite being within scope of legal aid. Another organisation which has both in-house caseworkers and membership organisations, said that when they advised people to refer clients to a solicitor, they 'come back to us and say we've tried ten and no one has capacity'. Within their own work, they need to refer clients out to legal aid providers if they need judicial review work 'and we have the same problem. We have a working group of practitioners who tell us the same.'

Support organisations echoed this, with one ATJF applicant saying 'legal aid is incredibly difficult to obtain' and noting the dearth of specialist community care legal advice available in the North East. Another made a similar point for Yorkshire, across the board of social welfare legal advice: 'Lack of legal aid contracts, no affordable advice on community care for the elderly/disabled population. For the largest county in England with the poorest transport and communication links, this lack is a real barrier to justice.' This organisation was resorting to asking law firms for remote pro bono support, but pointed out that this too takes time and funding on the part of their organisation to arrange, co-ordinate and facilitate.

# A serious shortage of provision (continued)

Community care providers described this lack of capacity from their side, in terms of having to turn away potential clients:

I would say that we probably would probably take on one in 20. Five percent of cases, if that. All of them are eligible, when I say 20, I'm thinking about the legal aid cases. I used to work evenings, some weekends, and I just, you just can't do it with a young family now. And you take on as much as you humanly can. LADAP-01

I could be easily taking on three, four, maybe five things a week that I've just had to turn down. I'm running 18 to 20 open files [of all types, not just legal aid] at the moment, which is a little on the high side.... It's less than one [a week], so I'm probably taking on one or two a month. LADAP-02

We turn away loads, I mean - well, the overwhelming majority of work that comes our way. I would say that we get those [email enquiries] three or four a week [in addition to other referrals]. Most of them we can't take. I mean, I think once a month we might take one on. LADAP-06

A very experienced solicitor explained that their organisation was turning away a large proportion of clearly eligible enquirers, and expressed frustration with the Legal Aid Agency's apparent lack of understanding of the difficulties:

We have had about six weeks or so, so far, maybe a little bit more where we've not been able to take on anything new, and the contract manager was being, when she came to do the annual audit, was saying, "So how do you account for the fact that your uptake of new matter starts has been 50% of what it was three years ago Where do you want me to start? Here have it, these are all the reasons. Because you can't bill stuff until you have finished it and you can't finish it until people on the other side of things do what they're going to do or the court list your case for a hearing, and if you can't stick your head above the parapet long enough to chase everybody, you can't progress the case, you can't finish it, you know, and you've got inexperienced people, because you can't recruit experienced people doing the work. So they're also unsure what they're doing and it also takes longer. You've got clients that are more difficult to get instructions from. [It] is not because the demand isn't there, that is because how do we service it? [SWI-06]

# A serious shortage of provision (continued)

A law centre director felt that demand had increased so substantially that many people would simply never get through to have their needs for legal aid considered at all:

I think at the moment we're answering about a third of our telephone calls ... We made a real effort with that a few years ago and we managed to get that up nearer to 80% of calls answered which we felt was pretty good. And we're probably still doing the same level of work, but the demand has just gone up so much that now the levels are down to sort of 35%. SWI-29

Another solicitor and team leader, in a private firm, explained that there was so much eligible demand that decisions about taking on new cases were left to individual practitioners' preferences:

And then it's just down to like what is the capacity of fee earners and do we want to take on more cases? And people will specialise in different things. Some people just like doing housing [related community care work] or some people you know just do a bit of housing but they do a lot of like age assessment community care cases. SWI-33

In this way, there can be moderate or limited provision for certain case types within an area but an absolute lack of provision for others, which is addressed in more detail in the sections exploring specialisation as a survival strategy.

From the barrister perspective, interviewees were aware that they were turning away work, via their clerks, but they did not know how much was being turned away, or how much solicitors were unable to place elsewhere. This applied to both Court of Protection and judicial review work. One explained that so many Court of Protection cases came in that, despite most being heard remotely, 'the sheer number mean that you could be appearing in Newcastle in the morning and then appearing in, you know, Truro in the afternoon and it will just take over your diary.' The barrister had therefore restricted their practice to cases within their own geographical area, both to manage the workload and because that geographical area was particularly starved of community care barristers.

The combined effect is that potential clients and support organisations are frequently unable to find provision, while the provider organisations and barristers are overwhelmed and have no more capacity.

# Financial unviability of community care legal aid: Legal Help

All of the provider interviewees stated that community care legal aid work is not financially viable. This was particularly the case for work done under Legal Help, as a law centre director explained:

Yes, the Legal Help work is really, you can't make money on it. It's just doing it if you have to... You know, the client comes and the case can only be done under Legal Help, it doesn't feel right to turn them away. But you know you're going to be losing money on it. SWI-29

Consequently in all of the private firms and most of the not-for-profits, lawyers avoided work on the Legal Help scheme, unless it was clear that they would move relatively quickly onto a Civil Representation certificate. As one explained,

We avoid sort of taking on Legal Help cases, which involves like protracted approaches to the ombudsman, for example. It can involve like loads and loads and loads of work at a very low rate and we don't break even on that. So we have to be quite careful. It's very, very difficult legal work. It's very, very complicated. And yet we're doing it on Legal Help. And we did actually get the back payments [for a client], which is great... We did manage to get a lot of money for the client, actually, but unless there's something in it that's a bit unusual, we don't tend to. Usually it's kind of, is there a JR? LADAP-05

Complaints to local authority and to ombudsman are in scope and a valuable way of resolving matters without going to court but the lawyer explained, 'I don't think any firm does them because they, it could conceivably involve hours and hours and hours of work at a rate which you don't break even on.'

The underlying reasoning for lower fees in the Legal Help scheme, compared with Civil Representation, is that work at that stage is simpler. For the same reason, it is possible to claim a percentage enhancement on Civil Representation hourly rates based on the complexity of the work, but this does not apply on Legal Help: the rate is the rate. A lawyer with decades of experience described this as 'certainly not true in community care,' where extremely complex work had to be done on Legal Help.

# Financial unviability: Legal Help (continued)

Within both children's and adults' social care cases, 'a lot of stuff ends up staying on Legal Help' as several of the lawyers explained. The case

...almost always starts with problems with the basic planning and assessment stage. That's where a lot of it starts and that's kind of where we almost always seem to get stuck. I have a lot of cases in that you get to the point where [the local authority] say, well, I will reassess and then you're sort of stuck in reassessment, Legal Help, hell forever. They quite easily get stuck there permanently. And that's partly because of what the courts in a JR would do, because the remedy for an unlawful assessment is a reassessment. So if the local authority have offered a reassessment, you can't go on to the certificate because you've essentially, in terms of the law, won. But you obviously haven't won because you haven't got [what] you need. LADAP-02

In the case described above, under 'What is Community Care?', of the pre-teenage child neglected by the parent and subjected to sexual abuse by another person, the lawyer explained that the matter would inevitably remain on Legal Help. Any potential judicial review would be addressed, as the previous quotation implies, by the local authority agreeing to reconsider, perhaps repeatedly, without necessarily resolving the child's situation: 'Eventually the local authority just rolls over [but] it takes that game of cat and mouse to enforce the rights. You'd never get on to litigation.'

The lawyer worked in a not-for-profit but had previously worked in private firms of various sizes:

If I was sitting in [previous private firm], I wouldn't have taken that case on, because I don't think I'll end up litigating. I think, if I'm successful, there will be an application for a care order, and I can't do that [because their legal aid contract does not cover public family law]. This is all Legal Help. And it took me, you know, 4 hours travel. You wouldn't do that [in a private firm], but we're going to get a good result for her, going to fight her corner. It's bloody outrageous. If I was in private practice, I'd be feeling so torn because I'd be thinking, this is going to do nothing to my fee target, even though what we're doing is absolutely spot on, best thing to do for this child. I could tell this case straight away, [if I were in private practice] I know that I'd look at it and I'd go, that's fucking awful, but I really can't help you with that. LADAP-06

The case would escape the fixed fee, but would remain on the extremely low Legal Help hourly rate with no prospect of moving onto Civil Representation. The lawyer said that the child's advocate, despite being 'a well-seasoned advocate who has that connection,' had struggled to find a lawyer to take the child's case, even in London where the provision is greater than in most parts of England and Wales.

# Financial unviability: Legal Help (continued)

Another element that complicates Legal Help work in children's social care cases is that a child under 16 cannot have a Legal Help case in their own name. They can have a Civil Representation certificate in their own name, and that is non-means tested for anyone under 18, even if acting with a litigation friend, but a Legal Help matter has to be means tested against the parents' income and capital. Even with part-time earnings, a parent is unlikely to qualify. The justification for this is unclear.

Consequently individuals and organisations were cross-subsidising legal aid work with grant funding for projects other than legal aid casework,<sup>14</sup> private cases (which limit the time available for legally aided work), or cases where they anticipate receiving a costs order against the opponent, which may mean certain types of case are simply not taken on:

I think it's fair to say that if we were solely reliant on legal aid fees, you know, we wouldn't do legal aid. We're only able to make it profitable because, you know, we're able to recover our inter-partes costs. If we were, you know, only able to recover our legal aid costs, then it would be pointless us doing it. LADAP-03

This evidence helps to explain the findings in the provision data above which shows that many providers simply avoid taking on Legal Help work.

## Escaping the fixed fee

Lawyers explained that many Legal Help cases would escape the fixed fee because of their complexity, but the hourly rate is so low that they were still making a loss. Others did fall in the 'dead zone' or 'black hole' between the fixed fee and the escape threshold of triple the fixed fee, while billing cases that escape the fixed fee added an additional administrative burden, discussed below, when the Legal Aid Agency disputed items of the work done. Whereas, in immigration law, lawyers were aware that some firms would cap their work at the level paid for by the Legal Help fixed fee to avoid both the financial losses and the administrative burden of billing escaped cases, they said '...that's not the way it's gone in community care – people stop doing it completely rather than do that.' That means it is necessary, but not sufficient, to reduce the escape threshold to double the fixed fee (as has happened in immigration law, for example). The rates need to rise at the same time.

# Financial unviability: Increased client care demands

Several interviewees explained how the wider context of austerity and cuts to other services shifted additional unpaid work into their casework:

I mean one of the issues with it, and it's perhaps a little bit peculiar to community care, is that the client group is very needy. As you'd expect, they're very vulnerable, they have a lot of issues and particularly with sort of cutbacks in social care and the sort of support that social workers can provide and so on, it's left them with nowhere to go. SWI-29

Another practitioner made a similar point about the loss of other services and its impact on the time taken and financial viability of community care work, whichever funding scheme is involved.

People don't have support workers anymore, no social worker or relative to come to the appointment with them so a lot of your time is being a social worker and supporting them to give you information rather than getting on with the casework, and then that's either not billable or it doesn't get over the escape threshold. That's local authority cuts to social work and charities being under pressure. SWI-02

Even where the client was supported by family members another solicitor explained:

I think that gets overlooked, but the level of desperation from families who've been fighting local authorities for years by the time they find us, they're exhausted, they're dealing with, you know, challenging relatives 24 hours a day. They are absolutely at the end of their tether and you know, people's needs are what they are. LADAP-02

Another added that 'You can spend a long time on Legal Help just getting to a point you might have got to much earlier because of the support needs.' While they felt that individual solicitors would not 'want it on record' with the Legal Aid Agency, nevertheless it is 'part of the consideration' of potential cases that 'people can't afford to do the work... That's why people get turned away.'

This is of course a systemic problem which cannot be addressed by the MoJ or LAA alone but recognition of this complex client care work in the legal aid fee rate is essential. The rates set when the fixed fee was introduced in 2007 fail to capture the level of work now required of a community care provider.

# Investigative representation

Investigative Representation is available where there is a need for additional work beyond the scope of Legal Help before the merits of the case are clear enough to apply for a full Civil Representation certificate. This might be where the solicitor needs counsel's opinion or some expert evidence, for example. Investigative Representation gives a slightly higher hourly rate and the possibility of paying disbursements, up to a limit of £1,500.

As explained in Legal Action Magazine in 2024:

It is available where the prospects of success are unclear, but there are steps that can be taken that will enable a reliable estimate of those prospects to be made (Civil Legal Aid (Merits Criteria) Regulations 2013 SI No 104 (CLA(MC) Regs reg 40). The statutory qualifying criteria require that the amount of investigative work is 'substantial' (reg 40(1)(a)) and the Lord chancellor's guidance under section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 advises that this threshold would be met where a solicitor would 'reasonably need' to carry out at least six hours of investigative work or that work would incur disbursements (para 6.11, page 20).<sup>15</sup>

Yet the authors of that piece note that only nine applications were made in the first quarter of 2024, perhaps because of the administrative burdens to applying, which they described as a 'maze'.

Several lawyers said they 'never' use Investigative Representation because the Legal Aid Agency so frequently refuses it. One explained that they were never refused full representation, because they simply go unpaid if they fail to obtain permission from the Court, yet if they needed funding to fully investigate the merits of the case before applying for permission, they said

[on the] investigative route, they're always turning it down and it gets really tiresome. You don't have time to deal with a rejection, an appeal, then taking ages, and then you can start the PAP and then you have to apply for a scope to be increased to cover issuing proceedings, like just crack on with it and do the letter. I don't have to spend as much time appealing silly Legal Aid Agency decisions as I used to, just because we've given up applying for investigative rep, I think. Not formally, it's just we just don't really bother anymore because of having to deal with that, which is, I guess, in its own way, quite a bad thing, isn't it? It means that we're not getting funding in place when we could because we can't deal with it. LADAP-05

# Investigative representation (continued)

Another described the application as £3-400 worth of work to obtain an allowance of £1500 'half of which will go to counsel.' One lawyer who does still apply for Investigative Representation had just received a refusal and explained that

Part of the difficulty is the generally poor decision making at LAA. Part of the reason for applying was that there's an actual conundrum in the case, because it's a weird health – social care divide case and I need counsel's input because it's not clear who the defendant needs to be, and their response was, can't you just PAP [send a Pre-Action letter to] everyone? The application took a couple of hours and that's their answer. Just PAP everyone! LADAP-02

This approach is particularly problematic in Wales because the dearth of case law on the Welsh social care legislation means that the merits of a claim were more likely to be unclear. Regardless of location, the 'nightmare' of obtaining Investigative Help means 'Your pre-action letter is not done with the benefit of counsel, because you couldn't get the funding' and that could bring criticism for not having raised certain points earlier that should be included in the judicial review claim.

This creates a position where one plank of the funding scheme is de facto removed, even while it appears to be available, placing a further obstacle in the way of financial sustainability. However, as with the other findings, resolving the difficulty around Investigative Representation will only be effective alongside an increase in the rates paid under the scheme.

# Judicial review

As in other areas of law, lawyers are not paid for judicial review work unless and until they obtain permission, except at the discretion of the Lord Chancellor (in practice, the LAA).<sup>16</sup> That would be most arguable where the defendant withdraws the decision under challenge before a permission decision is made. Therefore the judicial review side of Civil Representation is also particularly financially risky for providers, as a practitioner in a specialist organisation explained.

It's complex public law... just on what appears to be a relatively simple case. This person comes in and says I'm disabled and I need care and they've assessed me as not entitled – there could be five different reasons for that and often they have difficulty communicating and don't understand it themselves – vulnerable clients – I hate the word vulnerable, but with communication problems, problems gathering evidence. [SWI-02]

Practitioners explained that it could be extremely difficult to predict the outcome of a judicial review challenge, meaning it did not feel fair that all of the risk is placed on them, and believed it meant many clients would struggle to find a lawyer willing to take that financial risk, or meant some lawyers were minimising the amount of work they did pre-permission. One set out the dilemma:

We got permission recently at a hearing last week and we got refused in the papers by a judge and this is a judge who is notorious for refusing permission on the papers and he just refused and said the case is rubbish, you know, essentially it was a very bad decision. And we went to the renewal hearing and the judge granted us permission on all grounds and said some very favourable things about the case and we've got expedition as well, for a hearing at the end of July. I was thinking the difference in the cost of this, so we turned up to court, we've done a huge amount of work and the difference that we will get paid nothing for any of this, versus when we get inter partes costs we may get like £80 grand. It's that big. It's ridiculous. LADAP-05

Even if they won a costs order against the opponent, an experienced solicitor and firm director said, 'You put a bill in for time that is entirely justifiable and it gets taxed out by 5 hours here, 10 hours there.' This could mean entire days' worth of work being simply removed from the costs received, with little justification but in circumstances where such deductions are difficult to challenge.

A further pressure in judicial review work is the deskilling of local authority lawyers, who are less used to receiving community care judicial review challenges, partly because of the loss of legal aid provision, which means 'it takes longer because the opponent lawyer doesn't know the law and then the LAA cut your bill on that because they think it wasn't necessary to spend so much time.' This 'lack of expertise and institutional memory' in local government therefore creates an additional financial challenge but there was a widely shared view that it also makes them more adversarial:

What's happened over the years is we're not able to take as many cases as we used to take. We used to have cases that would resolve pretty quickly and there wasn't as much pushback from opponents. But now opponents tend to sort of fight 90% or pretty much everything. And so all of your cases are bigger. So now I'll have 50 cases instead of 100. And that's not because I'm not working as hard. It's just because opponents are fighting. LADAP-01

The justification for placing judicial review work at risk should be urgently revisited, in light of the complexity of the merits assessment and in the absence of any credible suggestion that community care lawyers are routinely submitting meritless judicial review applications.

# Hyper-specialisation as a survival strategy

Almost all of the provider interviewees specialised in one or two elements of community care law, with very few taking on a broader range of work types, with the exception of some of the Law Centres, which focus on their geographical community. Some specialise in children's social care and do not take on adult cases, while others taken on almost exclusively adults' cases. One of the largest firms by Legal Help matter completions undertakes almost exclusively age assessment cases for unaccompanied children, while another of the larger firms focuses heavily on asylum support matters, both of which would either be conceded relatively quickly or would move quite promptly onto a Civil Representation certificate. All of them aimed to take on as few cases as possible which were likely to remain on Legal Help, and to select only those likely to move onto Civil Representation.

The largest trend, however, is towards Court of Protection as the exclusive sub-type of practice. One lawyer described this as 'go[ing] for the safe option of COP work rather than traditional comm care work' and most felt that this was not necessarily a conscious decision or strategy, but rather one which evolved under the pressure of each individual lawyer's own fee target. A solicitor described how, in their previous private firm, 'there was never a proactive decision to say we're not taking certain cases, but just because of individual fee targets, people ... specialised in COP and gradually ceased taking comm care'. Another described how this dilemma played out in their thinking over a period of years:

We try not to take on a case because it's more attractive commercially, but then there is that commercial pressure, particularly if you're more senior in the department and you've got a bigger target... I suppose it's been something that's happened sort of naturally over time, but there's more and more focus every year on taking on cases that it could be commercially attractive... But of course, that leaves people without access to justice just because their cases and their case is unlikely to lead to an order for costs for the lawyers. LADAP-01

The solicitor explained this in terms of their own target:

I suppose the way I look at my target is that, between me and my assistant, my paralegal, we've got to make £1000 every day. And if you're working all under legal help and it's 50 quid an hour, then you'd have to do... 20 hours of work between the two of you in 24 hours if you were just doing Legal Help work.

Contrary to the assumptions about economies of scale in the Carter Review, which drove the move to 'market-based procurement' in 2007, the solicitor felt that it was only possible to avoid this hyper-specialisation and avoidance of Legal Help work if a firm remained very small:

I joined the firm 13 years ago and targets were a lot lower because the world isn't in the state that it's in today and the firm didn't have the same overheads that it now has. And the more that a firm grows, the less viable legal aid becomes. And so that's why so many legal aid firms are these small entities, because when you have a small entity, you don't have to worry about it [so much]. But then those small entities can't really run complex cases because they just don't have the manpower for it.

# LAA bureaucracy and administrative burden

The administrative burden on providers adds to the financial unviability of doing legal aid work across all categories of legal aid, but there are additional features that exacerbate the problems for community care legal aid.

Some of the problems across the legal aid sector are detailed in the 2025 report 'Non-Chargeable Time in Legal Aid Work'<sup>17</sup> which measured the amount of time spent by individual practitioners and organisations on a range of casework and non-casework tasks which were essential to their legal aid cases or the overall contract but for which they could not bill the LAA. It includes work at the outset on opening a file, billing work, and all stages in between. This did not split out community care practitioners, since they were a small subset and the data would not have been robust at such small sample sizes, but the overall findings were that the median amount of non-chargeable time for workers in legal aid firms was one hour and eleven minutes per day, over a ten-day recording period, or 15% of an eight-hour working day.

There is no reason to think this is unrepresentative of the community care providers in the sample and it is self-evidently unsustainable. One of the solicitor interviewees calculated their standard working day and concluded that 'probably 2 hours a day would be the sensible calculation of non-chargeable work, 10 hours a week.'

The problems with using the LAA's case management system (CCMS) are widely reported, but practitioners believed that those wider issues were exacerbated for smaller areas of law like community care because LAA staff are less familiar with the cases. One practitioner said, 'We're trying to get some people in the LAA trained as specialists to understand what happens in a community care case, so they understand why we're applying at a particular time and why it's important to get the certificate.' They argued that LAA staff 'need to understand what they call in [the Review of Civil Legal Aid] the "user journey" – what happens at different stages,' instead of viewing their interactions with providers as 'a purely administrative function.' As indicated in the section on Investigative Representation above, this can become a vicious circle: 'There are so few applications that [the LAA] don't allocate any staff to learn [community care legal aid] and specialise, and then because it's so bad, people don't apply and that exacerbates the loss of knowledge.'

# LAA bureaucracy and administrative burden (continued)

This could play out in an excessively rigid view of the work required, simply because the LAA caseworker lacked understanding of the area of law:

I suppose one of the big issues is that the legal aid agency tends to have quite a limited view about what cases involve and they think all the cases are the same. So how can your judicial review cost this much money? Well, because it's a bundle of like 2000 pages. We've had to write 5 witness statements ... I think it's kind of like applying the universal standard to every single case. LADAP-05

Another solicitor detailed this limited knowledge in relation to a particular case:

I was refused funding because the local authority had offered a standstill agreement on a JR. The CPR [Civil Procedure Rules] says you can't have a standstill agreement on a JR. So had I accepted that, under the guidance of the legal aid agency, I'd have been negligent. But they were like, oh no, you can just do a standstill agreement, you don't need funding now. Well, no, I can't. So it's such a fundamental level that these problems are being caused. And then you've got to appeal that, you've got to, you know, that's a day of your life plus all the extra bits that are now on CCMS. LADAP-02

Several interviewees also described having to make all funding applications as emergencies, even if they did not need a decision within 24 hours, because 'most things need a decision in a week' but the non-emergency waiting time is too long and unpredictable and the judicial review limitation period is strict. The emergency application, however, created extra work because it involves a two-step process. Solicitors also pointed out that a default cost limitation of £2,500 for judicial review permission applications required them to apply for extensions even though they would normally be paid nothing unless they obtained permission.

The LAA and MoJ should invest focused effort in reducing the level of bureaucracy and administrative burden on civil legal aid providers across the board, including reducing the unpaid elements and / or extending payment to cover these tasks, as well as making efforts to build knowledge and understanding among staff of the typical progress of community case casework and representation.

# Difficulties with recruitment

A significant part of the reason for the capacity shortages, and as indicated in the Dormant Offices section above, is the difficulty in recruiting, retaining or replacing qualified staff, particularly those who meet the supervisor standard, given the financial constraints of working under legal aid. A law centre manager described their organisation's difficulties:

We lost our supervisor, she got another job and I guess it was a combination of, it had never really managed to even break even financially, but finding a community care supervisor is really difficult... But to find an experienced Court of Protection lawyer who would work for us under legal aid was not really going to happen, I don't think. SWI-29

Another interviewee, with broad expertise across civil legal aid, pointed out that it is difficult to find supervisors in any area of civil legal aid but that,

When you get into the lower volume categories of law, I mean community care and mental health are probably the hardest. So for key areas it's the biggie, community care is the one with the biggest problem. SWI-36

This is likely to be all the more acute in areas of existing advice desert, where there is no training route for new lawyers to gain experience in community care law and progress to supervisor level, and no organisations with qualified legal staff who might be looking for a new role. Even those in London described having struggled to recruit staff, with one solicitor describing recruitment efforts where, 'We've often just had one applicant and I've been headhunting' (a process which they did not enjoy. New practitioners without community care experience were often the only option, but 'then we have to train up those people and we've got to supervise and give them a lot of time... we don't have because of the other demands that we've got.' Once trained, there is always a risk of losing new practitioners, even within the firm, 'because there are other departments in the firm where they know they can have a brighter career and they've come so far and they've worked so hard and so money does become an important factor.'

Another lawyer, based in London, said it took the organisation 'a year and a half to recruit me' as an experienced community care lawyer and even longer to build a team:

Then we struggled to recruit a junior solicitor but were able eventually to do so because the person we recruited was someone who previously worked in the organization, had qualified as a solicitor in the meantime, and again was able to afford to work with us, able and willing. We had two recruitment rounds before we got to him. LADAP-06

# Difficulties with recruitment (continued)

Beyond London, interviewees unanimously agreed the situation was worse; a point which is borne out by the data on the number of community care offices outside London, and particularly the small number of these which do not also have a London office:

Once you've fallen below that threshold – you've never achieved that threshold or you've fallen below it – you never have that advantage [of a pool of lawyers to recruit from]. And so the practice that wants to do community care, or did have a supervisor, loses them, can't recruit, loses its community care contract, so it disappears really quickly, whereas London, it's more likely to just about keep going because it's got, you know, it creates the pond that people can fish in.

Experience in immigration law suggests that the only solution to this will be investment in supporting firms, Law Centres and other specialist legal organisations to expand into community care law by fully funding traineeships, set-up costs for organisations accepting new contracts, and remote supervision and mentoring in-reach to create capacity in new areas.

## The supervisor standard

Beyond the difficulties in recruiting experienced practitioners, several interviewees described difficulties with the community care supervisor standard itself, with one saying that 'The supervisor [rules] killed community care law.' Another described how difficult it had been to even find the most up-to-date standards before their organisation applied for a community care contract. Once they had found the correct document, it was 'opaque' and different individuals in the LAA gave them different answers as to what the provisions meant.

The problems fall into two categories: the volume of hours and the breadth of the competency requirements. The supervisor needs to have a certain number of hours' community care casework experience 'or relevant class of work' within each year of a three-year period (or five years part-time). 'Relevant class of work' was further criticised as unclear, with one saying, 'I couldn't get beyond that because I've been out of private practice for a year and prior to being in private practice I've been doing claims against public authorities.' It was not clear whether those experiences counted as a 'relevant class of work'.

The volume of hours was problematic for some organisations, particularly not-for-profits, where the cross-subsidy model involved project work outside the technical confines of legal casework: one solicitor said, 'I mean, in private practice, that's what you're there for, isn't it? In the NGO world, I'm not saying that's impossible; I don't think it would be impossible, but you have to do a minimum of 350 hours.' Another explained that in their not-for-profit,

It was the supervision that changed it so that we had a contract and we couldn't guarantee that we would do that many hours. So you have to do that many cases. And I think unless you've got someone dedicated doing it and nothing else... I think it is [worse for community care than for other things]. LADAP-04

The second difficulty, the competency requirements, was described as an excessively broad expectation in the context of the hyper-specialisation in most remaining community care legal aid providers. Certain matters listed on the competency boxes were ones which would only be done on Legal Help but 'You can't do legal help work in a private practice.' Overall, the competency boxes were criticised as excessively focused on adult social care and more difficult for those focused on children's social care. One solicitor went through these in detail during the interview explaining why the tickboxes were a poor fit for the work they would do in their organisation. Another criticised the LAA for, on one hand, 'micromanaging' the content of the experience required of supervisors but on the other, 'no policing' of the number of supervisees:

I mean, theoretically, I could supervise a hundred people, but I wouldn't be able to do it very well, if at all, really. It's more focused on can you be a supervisor rather than how many people you're supervising. LADAP-05

Given the fears across areas of law about the aging population of legal aid lawyers, both the content and the clarity of the supervisor standards require urgent attention. Access Social Care's 2022 report on career pathways contains more detail on this problem, and this report adopts the recommendations there.<sup>18</sup>

# Escalating complexity and shifted costs

Several practitioners pointed out the serious consequences of people not receiving timely advice and representation. As one explained:

You have cases where the parent of an autistic person calls on the local authority because they need help and then the person ends up in Rampton [high security hospital] or something. The cost of that, compared with a good legal aid rep to challenge the local authority at the beginning. The human cost, the financial cost, the burden on the NHS, the LAA and MoJ, but the human cost is devastating. SWI-02

One argued that Court of Protection cases often arise because 'something went wrong earlier' in hospital, a residential placement or an Assessment and Treatment Unit under section, and these problems create and escalate consequences and costs. Frequently, they said, 'Placements break down because needs were underestimated', especially when those 'needs are being met by a family carer.' Yet there is a strong incentive for local authorities to 'underestimate' needs, given the financial pressure they face around social care spending.

The difficulties in local authorities and those in legal aid exacerbate one another: the lack of in-depth knowledge within the LAA led one practitioner to suggest that LAA staff 'don't understand that if you don't get legal aid or don't get the right barrister that it will escalate, because they don't understand what the case is about,' while another said that, 'I think it's just a case of there isn't enough resource [in the sector], you know demand for every bit of our service is more than we can cope with.' The shortage of local authority services to meet the underlying needs and sector capacity to meet the legal advice needs then spills over into other organisations, as an MP's caseworker described:

Like we recently, there's a lady that's been contacting us ostensibly complaining about the council but she clearly is losing her critical faculties in a way that we're obviously not capable of diagnosing but she's getting increasingly confused. She's coming to the office. She's quite elderly and so we requested a community care needs assessment because we regard ourselves as one of the authorities that she's presented to. But we don't have much training in that regard so we'd normally be writing to adult social care in a kind of informal, a relaxed way. But as well as community care, I'd say mental health is one of those things that just, it intersects with so many of those other issues and in a big way, the most complicated cases are ones where there is a mental health complicating factor. SWI-14

There needs to be a clearer understanding of the escalated and shifted costs of people not receiving access to community care (and holistic) legal advice and representation when needed, to be set against the more obvious costs of providing legal aid. The National Audit Office has previously criticised the MoJ for lacking a clear understanding of these shifted costs resulting from legal aid cuts. These are likely to be particularly severe in relation to community care, but also to be unseen, since the scope of community care legal aid per se was not reduced by LASPO.

# Geographies

The geographical distribution of legal aid offices is set out above in the Regional provision picture section. However, one of the clearest conclusions of the research is that there is no longer any meaningful regional picture. Provision exists in London and the East Midlands, and is extremely sparse everywhere else but, combined with the hyper-specialisation of most community care practices, there is no longer any semblance of access within the community. As one solicitor put it, 'You can't really go to a local community care lawyer, unlike say conveyancing or criminal where you get lawyers all over the country.'

While law centres largely limit their provision to a particular locality, most provider interviewees said that their clients are all over England and Wales. A London lawyer noted that, 'I think that last time I checked I had cases against about 60 local authorities in the country. Why am I a lawyer in London, that's had cases literally everywhere. That can't be right, can it?'

This lack of community connection hampers the ability to find lawyers, partly because of the loss of word-of-mouth recommendations from people that are known and trusted, and the lack of close referral relationships between local support organisations and local law firms, which exists in other areas of law. A solicitor explained:

It creates a bit of a perfect storm. There's a lack of provision so people assume there's no provision at all, and go to MPs' caseworkers who assume there's no provision and try to sort it out themselves. People are not seeking out legal advice because the availability of legal advice is so low and it's not accessible. LADAP-02

Where a client needs a home visit (which is much more likely to be needed than in other areas of law), the distance from available provision might add a further obstacle: one solicitor described making home visits 'if a client's local, or like within like 50 miles of where I live.'

In children's social care, solicitors pointed out that referrals often came through the child or young person's advocate. One solicitor had previously worked for a service that offered support for advocates, receiving 'four or five queries a week from advocates who are saying this is wrong... but they're not even sure that there is a legal issue' and they lack the training or in-house support to understand 'what are the legal rights and entitlements of this child or care leaver?' The interviewee said that advocates were often unaware that legal aid might be available – or indeed concerned about losing contracts with local authorities if they referred 'too many' children to lawyers – concluding that, 'nationally, I would be worried about the picture' in terms of children being referred to legal aid lawyers when needed.

It might be assumed that the regional shortages set out in the Regional provision section above could be mitigated with remote access. As one of the barrister interviewees said, most Court of Protection hearings take place remotely, meaning they can appear in courts at opposite ends of the country on the same day. Several support organisations also noted that the post-pandemic use of remote access means they can (at least in theory) reach legal aid providers and corporate firms willing to work pro bono.

However, the overall shortage of capacity means that remote access can do no more than somewhat redistribute the very scarce supply. The risk is that it enables firms which choose to do so to pick up CoP cases from all over the country and entirely abandon locally based Legal Help and judicial review work.

A second disadvantage is that, for many community care clients, as one lawyer put it, 'You need to be in a room with the client.' The points made about the growing complexity of cases and the lack of wrap around support for clients (Financial unviability and Shifted costs sections) means it is much more difficult to work with them and the need to build a strong rapport is all the more important.

A third, as explained by a practitioner in a specialist community care organisation, is the loss of local relationships. This has two disadvantages: first, it might be more difficult to resolve cases.

If you're in Bristol and you have Bristol clients, you get a good relationship with the local authority and can resolve things without getting to court, rather than sending an email to an anonymous person in a local authority at the other end of the country. SWI-02

Lawyers linked this anonymity to an increasingly adversarial approach by some local authorities who were now more likely to 'fight everything', as discussed in the section on Judicial review above.

Second, it makes it more difficult to identify where one local authority is repeating the same mistake or unlawful conduct: 'There might be 50 different cases against the same local authority on similar grounds, but all being taken by a different contract holder so you would never see the patterns.' That in turn means that there might be more claims in the long run because nobody is in a position to take up the strategic challenge and change things for all service users within an area, while at the same time likely leaving many people with valid cases unassisted.

Remote access therefore offers an additional mode of contact for those with good connections and limited mobility. However, it is very far from an overall solution, in light of the serious capacity shortages at Legal Help level and for judicial review work across most of England and Wales.

# Severe shortage in Wales intersecting with devolved legislation

A lawyer who works on community care and CoP cases in both Wales and England explained that the Mental Capacity Act applies to both jurisdictions, meaning lawyers tend to be comfortable with CoP work on both sides of the border, whereas the 'underlying community care legislation differs,' and it is unclear how many lawyers in England do or would take on Welsh JR cases.

Consequently a significant problem in Wales is the lack of recognition of a legal problem – or a problem with a potential legal solution, where there are few organisations offering legal aid work:

If you're a solicitors firm... you bring the cases, but you also advertise your services. And so if there's nobody out there saying 'Have you got a problem with your needs assessment? Have you got a problem with your care plan?'... I suspect anyway, somebody with no knowledge of what your rights are [would be] thinking 'Well this is how it is. I've just been dealt a bad hand and this is how it is and there's no way of me going about challenging that', because there's nobody out there advertising their services. SWI-34

Even where a person did identify that they had a viable challenge in law, the lawyer said that in Wales, 'I think they will struggle to find somebody who is competent and willing to take it on.' They also noted a perhaps less adversarial approach by public bodies in Wales, based on their experience of representing both claimants and public bodies, meaning there was 'much more of a wish to resolve matters without coming to the court.' Although this can be taken as a positive, there are also disadvantages in terms of certain cases not being challenged when they should be, and 'it does mean that we don't get much help with what the law actually means'. This limited the development of Welsh case law in a way that housing practitioners in the SWILAm research also noted.<sup>19</sup>

The overall shortage of lawyers in Wales, particularly for judicial review, is a matter for the LAA and MoJ to urgently address, but it may also be worth the Welsh Government, together with Welsh local authorities and the judiciary, issuing regular guidance on matters within the devolved legislation that might otherwise have come to the courts if not resolved, to avoid claimants, lawyers and local authority staff having to continually address the same problems afresh.

If eligible need in Wales is not being met on the existing legal aid system (and clearly it is not) then there is a need for the MoJ to explore the use of its powers in LASPO s2 to make alternative arrangements (such as grants) to secure provision in line with the duty in LASPO s1.

# Remote access or needing to see clients in person

While remote access has both cushioned and accelerated the loss of local community care practices to an extent, interviewees expressed concern about those who are lost from the process because they cannot access remote legal advice. As one put it, 'What's not coming in is something that does concern me.' Another noted that while the ability to interact remotely

...has improved in terms of tech and things and some of that tech being much more available on an everyday basis to clients, but of course [the concern] is for those who can't, it's completely excluding. And you do absolutely have clients where you cannot act for them at a distance. LADAP-07

Those clients included people 'who aren't necessarily in jobs where they will be working on Teams every day' and those 'where people are struggling a bit more, they maybe aren't on great devices, we're on a phone, we're on an iPad, neither of which are fantastic', connecting to both poverty and the lack of digital skills.

However, it could also be something more fundamental: a related concern arising from remote working is that 'somebody else is instructing you on their behalf in effect' which is often benevolent but may also be disempowering for the client. A solicitor pointed out that the Mental Capacity Act includes 'the obligation to take reasonable steps to maximise somebody's capacity,' which would often require seeing them in person. As a consequence, 'presuming incapacity' might make the solicitor's job easier, especially given that travelling is paid at a lower rate than other aspects of the work. They explained further:

An individual's community care case is often, or what you take in a statement is, what's your day like? How does it work? How do you get to do certain things or what things don't get done, and you literally kind of walk through that day. And sometimes, depending on the nature of the disability, it's really useful being in their home environment and being able to understand what they mean by what they say, and to reduce the levels of misunderstanding because you can just actually see the 'why', you know, the hoist doesn't work in this position and kind of all that kind of stuff. LADAP-07

Likewise those specialising in children's social care felt it was often important to meet a child or young person face to face early on. This might be to assess Gillick competence, as a fundamental part of deciding whether the child was able to instruct the lawyer in their own right, but is also described as an important part of building a trusting relationship, particularly when a young person may feel defensive, feels let down by other adults in their lives, or is traumatised.

Typically I would certainly like to meet a child or young person in the first instance, and then we can build that, and then having sort of established a rapport, then you can work online, because I think children and young people are quite up for that,... but I think there's a risk. You've got to be careful. There's a risk you lose nuance, you lose an appreciation of how the client is coping and managing and responding and engaging and understanding. LADAP-06

In light of this, it is vitally important that the remaining provision be maintained and strengthened, and new provision be supported in current advice deserts, despite the possibility of doing much of the work remotely. As with the other recommendations, this requires a multi-faceted approach but cannot be achieved without putting in place the appropriate financial support for legal aid providers.

# Recommendations

## 1. Increase legal aid fees

The fees for both Legal Help and Civil Representation work need to increase significantly. Some other areas of law have received a fee increase because it became apparent that the duty in s1 of the LASPO Act to secure the availability of legal aid in accordance with the Act was not being fulfilled. That is undeniably the case in community care legal aid. The combination of receiving no fee uprating since 1996, a 10% fee cut in 2011, the loss of other areas of law from the scope of legal aid leaving some practices financially unviable, and significant increases in all operating costs including rent, utilities and staffing mean that providers are unable to continue without a fee increase.

## 2. Reduce the escape threshold to double the fixed fee

Unless the government is willing to abandon the fixed fee, the escape threshold needs to be reduced to double the fixed fee. That has been adopted in immigration law. It means providers' maximum loss per case would be 99% of the amount they were paid, instead of the current 199%, when a case costs just under three times the fixed fee. This would still not entirely fulfil the 'swings and roundabouts' principle unless they completed two cases for half of the standard fee for every one which cost almost double but did not quite escape, but is more manageable than the current situation. This recommendation still requires that the hourly rate for Legal Help is increased.

## 3. Separate the core community care and Court of Protection data and monitor these separately to ensure that there is a realistic prospect that community care legal needs are being met. Likewise split the children's and adult social care data so that it is possible to monitor these separately.

As the data in this report shows, the amount of Civil Representation work outside of Court of Protection cases is very low, but this loss of provision is hidden unless one painstakingly dismantles the data on the Power BI site. There is a need for more intensive monitoring of community care legal need (without requiring the few remaining providers to undertake unpaid monitoring of the cases they turn away).

# Recommendations (continued)

## **4. Reduce bureaucracy**

As with other areas of law, there is an urgent need to reduce legal aid bureaucracy and the time spent on tasks for which providers are not paid. This currently amounts to a median figure of 15% of an eight-hour working day. There is scope to reduce this bureaucracy or alternatively to pay for the time which is required but currently non-chargeable (and therefore not counted in the calculation of whether a case escapes the fixed fee).

## **5. Invest in training, retention and supervisory support**

Support organisations to remain or expand into community care law by fully funding traineeships, set-up costs for organisations accepting new contracts, and remote supervision and mentoring in-reach to create capacity in new areas.

## **6. Develop a clearer understanding of the escalated and shifted costs of people not receiving access to community care legal aid.**

The National Audit Office has previously criticised the MoJ for lacking a clear understanding of these shifted costs resulting from legal aid cuts. The MoJ should undertake research to build understanding of the benefits of legal advice and representation, and of the shifted and escalated costs when these are not available, to be set against the more obvious costs of providing legal aid.

## **7. Work with the Welsh Government to better understand the shortages of community care (and other) legal aid and the impact of this on the devolved Welsh legislation.**

This work needs to take a holistic approach to understand the impacts of administrative matters such as the lack of standardised wording for legal aid applications relating to Welsh legislation, as well as the broader implications of lack of case law development, to inform a strategy for overcoming the shortage of provision.

## **8. Deploy the powers in LASPO s2**

An overarching recommendation is that the MoJ should explore ways of exercising the powers in LASPO s2 to make alternative arrangements (such as grants) to secure provision of community care legal aid in line with the duty in LASPO s1.

# Appendices

## Appendix 1: Breakdown of Legal Help and Civil Representation matters opened, by LAA procurement area, 2023-24

This corresponds with Table 4 in the main report, which covers 2024-25.

| Region         | Legal Help | Civil rep |
|----------------|------------|-----------|
| East Midlands  | 726        | 200       |
| Eastern        | 17         | 44        |
| London         | 630        | 447       |
| Merseyside     | 23         | 7         |
| North West     | 90         | 193       |
| North East     | 5          | 179       |
| South          | 0          | 48        |
| South East     | 8          | 80        |
| South West     | 44         | 170       |
| Wales          | 39         | 59        |
| West Midlands  | 29         | 142       |
| Yorks & Humber | 32         | 503       |
| Total          | 1643       | 2074      |

## Appendix 2: Provision of Legal Help and Civil Representation by procurement area April 2024 to March 2025

This gives a more detailed breakdown of the regional provision data in Table 4 in the main report.

| Fin year | Local authority        | Region                   | Legal Help | Civil rep |
|----------|------------------------|--------------------------|------------|-----------|
| 2024-25  | Derby                  | East Midlands            | 187        | 1         |
| 2024-25  | Mansfield              | East Midlands            | 112        | 0         |
| 2024-25  | Nottingham             | East Midlands            | 408        | 97        |
| 2024-25  | Rushcliffe             | East Midlands            | 1          | 64        |
| 2024-25  | Cambridge              | Eastern                  | 0          | 19        |
| 2024-25  | Colchester             | Eastern                  | 4          | 1         |
| 2024-25  | Luton                  | Eastern                  | 15         | 3         |
| 2024-25  | Barking and Dagenham   | London                   | 0          | 1         |
| 2024-25  | Barnet                 | London                   | 1          | 0         |
| 2024-25  | Bexley                 | London                   | 0          | 1         |
| 2024-25  | Bromley                | London                   | 81         | 12        |
| 2024-25  | Camden                 | London                   | 143        | 80        |
| 2024-25  | City of London         | London                   | 37         | 54        |
| 2024-25  | Croydon                | London                   | 4          | 0         |
| 2024-25  | Enfield                | London                   | 0          | 5         |
| 2024-25  | Hackney                | London                   | 11         | 8         |
| 2024-25  | Hammersmith and Fulham | London                   | 116        | 26        |
| 2024-25  | Haringey               | London                   | 41         | 8         |
| 2024-25  | Islington              | London                   | 27         | 54        |
| 2024-25  | Lambeth                | London                   | 36         | 33        |
| 2024-25  | Lewisham               | London                   | 8          | 8         |
| 2024-25  | Newham                 | London                   | 20         | 8         |
| 2024-25  | Southwark              | London                   | 4          | 0         |
| 2024-25  | Tower Hamlets          | London                   | 45         | 125       |
| 2024-25  | Wandsworth             | London                   | 27         | 3         |
| 2024-25  | Liverpool              | Merseyside               | 39         | 7         |
| 2024-25  | Wirral                 | Merseyside               | 7          | 0         |
| 2024-25  | County Durham          | North East               | 0          | 8         |
| 2024-25  | Darlington             | North East               | 2          | 112       |
| 2024-25  | Newcastle upon Tyne    | North East               | 0          | 23        |
| 2024-25  | Stockton-on-Tees       | North East               | 0          | 18        |
| 2024-25  | Bolton                 | North West               | 41         | 1         |
| 2024-25  | Burnley                | North West               | 8          | 0         |
| 2024-25  | Lancaster              | North West               | 0          | 8         |
| 2024-25  | Manchester             | North West               | 40         | 195       |
| 2024-25  | Wigan                  | North West               | 1          | 77        |
| 2024-25  | Portsmouth             | South                    | 1          | 0         |
| 2024-25  | Southampton            | South                    | 0          | 36        |
| 2024-25  | Brighton and Hove      | South East               | 8          | 2         |
| 2024-25  | Crawley                | South East               | 0          | 20        |
| 2024-25  | Maidstone              | South East               | 2          | 74        |
| 2024-25  | Bristol, City of       | South West               | 20         | 100       |
| 2024-25  | Cornwall               | South West               | 8          | 58        |
| 2024-25  | Plymouth               | South West               | 0          | 43        |
| 2024-25  | Somerset               | South West               | 0          | 52        |
| 2024-25  | South Gloucestershire  | South West               | 0          | 2         |
| 2024-25  | Cardiff                | Wales                    | 2          | 37        |
| 2024-25  | Gwynedd                | Wales                    | 41         | 31        |
| 2024-25  | Vale of Glamorgan      | Wales                    | 0          | 1         |
| 2024-25  | Birmingham             | West Midlands            | 14         | 125       |
| 2024-25  | Coventry               | West Midlands            | 33         | 11        |
| 2024-25  | Warwick                | West Midlands            | 0          | 97        |
| 2024-25  | Calderdale             | Yorkshire and Humberside | 0          | 23        |
| 2024-25  | Kirklees               | Yorkshire and Humberside | 0          | 170       |
| 2024-25  | Leeds                  | Yorkshire and Humberside | 26         | 129       |
| 2024-25  | Sheffield              | Yorkshire and Humberside | 2          | 114       |
| 2024-25  | York                   | Yorkshire and Humberside | 1          | 135       |

<sup>1</sup> The Community Legal Service (Funding) Order 2007 and The Civil Legal Aid (Remuneration) Regulations 2013

<sup>2</sup> Funded by the Economic and Social Research Council

<sup>3</sup> The SWILAm research also included lawyers working in housing, immigration and welfare benefits law, with a total of 53 lawyer / professional interviewees.

<sup>4</sup> The legal aid statistics do not specify Investigative Representation separately from the main Civil Representation scheme so it has not been possible to distinguish the number of these.

<sup>5</sup> Maps by Chris Emberson, Southampton University Geodata Institute. See [www.legalaidmapping.org.uk/map](http://www.legalaidmapping.org.uk/map)

<sup>6</sup> <https://judicial-reviews-app.apps.live.cloud-platform.service.justice.gov.uk>

<sup>7</sup> This may be slightly skewed by new offices, since the Legal Help data covers completed matters, and may exclude those which only began work recently, though the Civil Representation data covers applications for grants of funding, and will include work started as well as completed.

<sup>8</sup> Source: [https://lginform.local.gov.uk/reports/lgastandard?mod-metric=8910&mod-area=ADASS-172184&mod-group=AllSingleTierAndCountyLainCountry\\_England&mod-type=namedComparisonGroup&mod-period=2](https://lginform.local.gov.uk/reports/lgastandard?mod-metric=8910&mod-area=ADASS-172184&mod-group=AllSingleTierAndCountyLainCountry_England&mod-type=namedComparisonGroup&mod-period=2)

<sup>9</sup> <https://ocsi.uk/2025/10/10/what-are-the-english-indices-of-deprivation-a-beginners-guide-to-the-imd/>

<sup>10</sup> Jo Wilding & Hannah Selby (2025): 'Overwhelmed by the general demand for advice': a picture of the not-for-profit legal advice sector in the 2020s, Journal of Social Welfare and Family Law VOL AND NO

<sup>11</sup> This data does not represent the entire legal advice sector but only those who applied for grants relating to legal advice and support; nevertheless it gives an indication of the extent of that reliance for those organisations.

<sup>12</sup> Ministry of Justice, Community care deep dive. Review of Civil Legal Aid Data Publication Series 2025

<sup>13</sup> P12

<sup>14</sup> Bearing in mind that charity law strictly limits the use of charitable funds to replace statutory spending.

<sup>15</sup> Karen Ashton, Tim Baldwin, Louise Eardley, Caroline Miles and Laura Peters, 2024. Adapt and Survive. Legal Action December 2024/January 2025

<sup>16</sup> The Civil Legal Aid (Remuneration) Regulations 2013 Reg 5A(1)(b)

<sup>17</sup> Legal Aid Practitioners Group, 2025. Non-Chargeable Time in Legal Aid Work

<sup>18</sup> Karen Ashton, Lainey Gough, Vicky Ling and Emily Sherratt, 2022. Community Care Legal Career Pathways. Access Social Care. Available at <https://www.accesscharity.org.uk/cclg>

<sup>19</sup> Jo Wilding, 2027 (forthcoming). The Housing Games: Rights, Legal Representation and Reality in the UK. In J. Wilding (ed) Law, Legal Aid and Lived Experience. Rights and realities across states and localities. Bristol Policy Press.