
Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

1. Introduction

The Bar of Northern Ireland advocates for a positive, proud, and strategic vision for publicly funded legal services in this jurisdiction. These services, including civil legal aid, protect society's most vulnerable citizens and enable effective access to rights. Courts should be accessible to all, not just because individual parties in a dispute can afford it or somehow are considered to deserve the benefit, but because it must be recognised that court rulings serve the whole of society.

Civil legal aid is critical to many thousands of people right across Northern Ireland in seeking access to justice and dealing with important life challenges, such as family breakdown, immigration matters, personal injuries, and housing rights. It is inconceivable that citizens should be left alone to navigate the legal system or to be offered suboptimal advice and representation.

Despite this, the legal aid conversation in Northern Ireland is all too often solely focused on cost. This overlooks the human value of access to justice and the wider societal and economic benefits brought about by appropriate investment in our justice system and our system of civil legal aid.

This submission is intended to complement the questionnaire that was submitted in June 2024 on behalf of the Bar Council (incorporating the views of the Public Law Bar) and Bar of Northern Ireland's civil law specialist groups, specifically the Family Bar, Personal Injuries Bar, and Immigration Group.

From the outset of this submission the Bar of Northern Ireland notes how the Department of Justice has framed the review of civil legal aid as an enquiry into how the department can, "better enable citizens' access to justice or to achieve value for money." We express concern that this "either or" approach to the review of civil legal aid is a problematic starting point which exposes a troubling attitude on the part of the Department of Justice that access to justice and value for money are mutually exclusive concepts.

In addition, we question the policy imperatives giving rise to this review. In a Committee for Justice session on the 23 May 2024¹, Department of Justice official Steven Allison noted that the call for evidence will allow the Department to understand the current landscape, the general themes, and provide the Minister with potential reform opportunities. The review does not however explain or refer to the last most recent independent review of Civil and Family justice performed by Sir John Gillen which launched in 2015 and reported in September 2017.

Consequently, the present Review does not make clear what is happening in relation to the findings of previous assessments of the provision of civil legal aid. This review also

¹ [Minutes Of Evidence Report \(niassembly.gov.uk\)](https://niassembly.gov.uk)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

does not discharge the Department's statutory obligation to review remuneration. Indeed, no statutory review has taken place since 2015.

By not addressing these pre-existing obligations and available relevant context, there is a significant gap in how the Review has been framed. The Department is directed towards taking what is claimed to be a foundational review of civil legal aid reform without providing the full context setting out why reform is necessary, how (with supporting evidence) the system is operating today, what the future needs of the service are, and what exactly should or can be improved within the system.

The dominant narrative throughout the Review of Legal Aid questionnaire is of pitting one critical element of the civil legal aid system against the other - for example, in asking respondents to choose between reducing the scope of legal aid in or not paying legal professionals within a reasonable timeframe. Deconstructing the civil legal aid system in this way and pitting non-negotiables against each other is reductive and, given our earlier comments about the Review omitting key context and facts about the status of the civil legal aid system, damages the credibility and objectivity of the review process.

The DoJ call for evidence references saving money by reducing the scope of services provided through legal aid. This has echoes of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which introduced swingeing cuts to legal aid across England and Wales, with devastating effect.

In a later section of this submission, we draw the department's attention towards the effects of LASO, specifically the extensive retrograde and repercussive effects for Civil Legal Aid provision in England & Wales. It therefore provides a preview as to what might flow from this review.

1.1 About the Bar of Northern Ireland

The Bar of Northern Ireland is a profession of self-employed barristers in independent practice with a unique specialism and expertise in legal advocacy. Members of the Bar champion the Rule of Law, serving the administration of justice and the public interest. In exercising their duties both to their clients and the courts, barristers play a vital role in safeguarding the legal rights afforded to all citizens right across Northern Ireland.

The maintenance of an independent referral Bar represents one of the cornerstones of the legal system in this jurisdiction. The existence of a strong and independent Bar is paramount in promoting public confidence in the expert representation provided by barristers. Barristers provide specialist legal advice and advocacy to their clients. They enable individuals, organisations, and businesses to exercise their legal rights and fulfil their duties.

Around 650 self-employed barristers work from the Bar Library building in Belfast. The Bar Library is a focal point for the profession, providing access to research technology

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

and modern facilities which enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court.

All barristers operating independently from the Bar Library practice under the “cab rank” rule. This requires barristers to accept instructions in any field in which they are competent, regardless of their views of the client or the circumstances of the case. A key advantage of the independent referral Bar model in a jurisdiction of this size is that any qualified solicitor, regardless of the size or location of their practice, can instruct any of the available cohort of independent barristers to help their clients with even the most complex or specialist legal issues.

1.2 Civil Law Practice at the Bar

The Bar of Northern Ireland represents barristers who are instructed by solicitors in the jurisdiction to provide civil legal aid services in a range of practice areas. Barristers with expertise in individual areas may involve themselves in specialist Bar Associations. Specialist Bar Associations are dedicated to the interests of barristers within specific areas of legal practice.

The Associations help to promote their members’ interests in working for reform in procedures or regulations, delivering training or supporting members through knowledge transfer, professional development opportunities, networking events and mentoring schemes.

The following specialist association operate within the Bar of Northern Ireland (membership numbers current as of June 2024):

- Family Bar Association (224 members)
- Personal Injuries Bar Association (152 members)
- Public Law Bar Association (77 members)
- Immigration Bar Association (10 members)

1.3 A Career at the Bar

A career at the Bar can be challenging. The work is demanding, increasingly complex and often involves dealing with difficult subject matters. Barristers engaged in civil legal aid can be engaged in child protection matters, as well as representing clients and their dependents who have suffered traumatic, and life changing personal injuries or require guidance through increasingly complex UK immigration and asylum processes.

Barristers are problem solvers but dealing with particularly traumatic experiences on a regular basis leaves barristers at risk of experiencing vicarious trauma. Barristers are required to employ vicarious resilience in order to serve the best interests of their clients

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

and the courts. Additionally, practitioners contend with the uncertainties associated with self-employment.

To provide the standard of service that is expected by both the solicitor and the Bar Council as regulator, a career at the Bar requires a commitment to ongoing learning and self-development over many years. The Bar Council requires its members to undertake a range of mandatory training on an annual basis. This training, which is fully funded by the profession itself, ensures that barristers remain up to date on legal developments as well as important enhancements in efficient practice management. Recent areas of focus have been in relation to the utilisation of new technology in a principled and progressive manner and training related to trauma informed practice.

Barristers have trained for many years and undertaken extensive and costly education, usually accruing large debt in the process. Their work also involves long hours. In a 2022 survey of criminal barristers, conducted by the Bar of NI, over half of respondents said that they worked 60 hours or more in an average week.

All practising barristers in Northern Ireland are also regulated by the Professional Conduct Committee (PCC). A detailed and comprehensive Code of Conduct sets the standard of conduct for barristers, and a mechanism exists for members of the public to raise any concerns about the conduct of a barristers.

The public are further served through a mandatory requirement for all barristers to have Professional Indemnity Insurance in place and to apply annually to obtain a Practising Certification which is only granted if the barrister can provide independent evidence that they meet all requirements necessary to receive instructions.

2. Access to Justice Under Threat

Access to justice is a fundamental principle of the Rule of Law which protects society's most vulnerable and enables citizens to effectively exercise their rights. Despite this, access to legal aid became gradually restricted from the point at which Policing and Justice became a devolved matter in 2010 and legal aid expenditure became the responsibility of the Department of Justice. Legal aid spending in 2015 was £105m, then dropping year on year until a £80m spend in 2018 and a £75m spend in 2021 (both criminal and civil legal aid).

2021/2022 saw a concerted effort to return the legal and justice systems to pre-pandemic activity levels and deal with a backlog in cases, reflecting an increased legal aid spend of £90m. From 2022 to present, Covid recovery has continued with a concerted effort to tackle delays in both civil and criminal courts. It must be acknowledged and understood that covid recovery and initiatives to speed up justice will invariably give rise to an increase in legal aid expenditure.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

The Bar of Northern Ireland supports the co-ordinated effort of the judiciary, legal professionals and the Courts and Tribunal Service to speed up the justice system. Barristers play an integral role in a system that is working at 130% capacity at present to ensure that all that citizens can access justice in an efficient and effective manner and that serious matters, for example care order proceedings, are dealt with in timeframe that serves the interests of justice.

Delays in case progression are just one example of the issues usually associated with the health system manifesting across the justice system – a dedicated but stretched and pressured workforce, historic underinvestment in the system and the need for structural reform. Further parallels exist between the people served by both health and justice systems as often the most vulnerable in our society.

2.1 The Economics of Publicly Funded Legal Services

The economic and social benefits of an appropriately resourced legal aid program are well evidenced. Community Justice Fund research demonstrated the benefits of legal aid in generating significant savings to other areas of public expenditure. For example, availing of professional legal advice and assistance can bring many benefits to clients and savings to wider society, including avoiding homelessness, families remaining together or children placed in kinship care, avoidance of A&E/ambulance visits etc.² This supports a report by the World Bank, which shows that the cost of not investing in legal aid is substantial in terms of delay, disruption, and inefficiency.³

Cutting one public service, like legal aid, will have a detrimental impact on other parts of the system. This was recently cited by the National Audit Office's February 2024 report on Government's management of legal aid which recommended that, "MoJ should work with others to improve its understanding of the costs and benefits of legal issues removed from scope during legal aid reforms, to ensure that changes have not led to less efficient public spending."⁴

Any restriction placed upon access to civil legal aid may deliver short term savings for the Department of Justice; however, the evidence shows that restrictions in access to justice will simply transfer demand and cost to other Executive departments.

The management of public services in this way runs contrary to the idea of collective responsibility and delivery of an overarching Northern Ireland Executive Programme for

² Clare Leckie, Rebecca Munro and Mark Pragnell "Defending the public purse: The economic value of the free legal advice sector: A report for the Community Justice Fund" (September 2021) CEJR <<https://cebr.com/reports/defending-the-public-purse-the-economic-value-of-the-free-legal-advice-sector/>>

³ [World Bank Document](#)

⁴ National Audit Office, "Government's management of legal aid: Ministry of Justice, Legal Aid Agency" (February 2024) Session 2023-24, HC 514 <<https://www.nao.org.uk/reports/governments-management-of-legal-aid/>>

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Government (PfG). This was recently articulated by the Pivotal Public Policy Forum when they described one element of an effective Programme for Government as joint ownership between departments, stating:

“PfG objectives should be jointly owned by all ministers and departments, not divided up between them. The PfG should recognise how multiple departments contribute to each objective.”⁵

In a clear demonstration of the cross departmental value of a sustainably funded legal aid system, a PWC report, building on conclusions that had previously been published by the World Bank, PWC conducted research in Australia which in 2023⁶ concluded that:

- For every dollar spent on legal aid the state received 2.5 times as much in public expenditure benefits.
- In addition, a host of non-quantifiable benefits were also delivered, and costs avoided.

2.2 Civil Legal Aid and Socio-Economic Challenge

The demand for and importance of legal aid across Northern Ireland is in part demonstrated by recently published statistics from the Legal Services Agency. In 2023/24, a total of 63,881 cases were granted legal aid. Of these, over two thirds (69%) were criminal cases with 31% (19,621) representing civil cases.⁷

The number of legal aid cases granted in 2023/24 (63,881) is at its lowest of the past five years. While this latest figure is only 0.1% (95) down on the previous year (2022/23; 63,976), it is 14% (10,417) lower than 2019/20 (74,298) and is still 1% (894) lower than 2020/21 (64,775) when the global Covid pandemic and associated national lockdowns were at their peak.

Civil legal aid is demand driven - no barrister can insert themselves into a case, counsel is briefed by solicitors, and they receive instruments from the client. The financial circumstance of that client is means tested and a determination made on their legal aid eligibility. It is critical to consider the demand for civil legal aid alongside Northern Ireland’s unwelcome status as the “poorest region”⁸ in the UK.

⁵ [20240627-Programme-for-Government-one-pager.pdf \(pivotalppf.org\)](#)

⁶ [Final-Public-Report PwC The-Benefits-of-Providing-Access-to-Justice1.pdf \(nationallegalaid.org\)](#)

⁷ [Legal Aid in Northern Ireland: Annual Statistics to March 2023 \(justice-ni.gov.uk\)](#)

⁸ Asda Income Tracker, Report: September 2023, Centre for Economics and Business Research

<<https://asdagroceries.scene7.com/is/content/asdagroceries/Z%20FUTURE/Microsites/Corporate/asda-income-tracker-october-2023.pdf>>

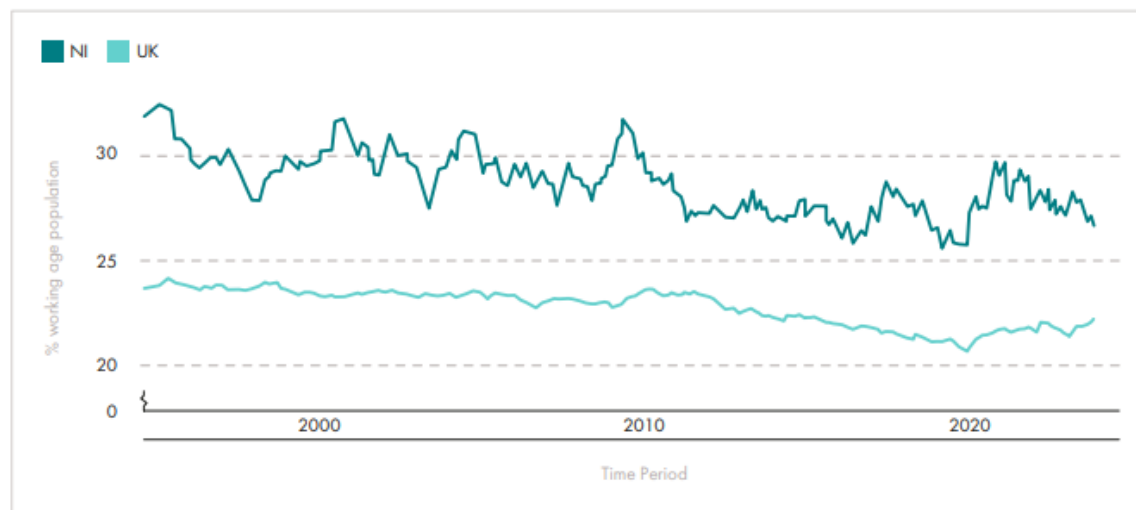
Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

More than one quarter of Northern Ireland's working age population is economically inactive.⁹ Research from the Pivotal Public Policy Forum shows that economic activity levels have remained stubbornly high across the decades and that for significant periods of time, and that Northern Ireland has had the highest rate of inactivity of all the twelve regions and nations of the UK.

Fig. 02 Economic inactivity rates - NI & UK

Source: UUEPC, ONS, Labour Force Survey - Q1 2024



Source: Pivotal Public Policy Forum

Northern Ireland has recently experienced the greatest rise in foodbank use over the past five years¹⁰ and levels of economic inactivity¹¹ here rank amongst the highest across the United Kingdom. One foodbank operator, the Trussell Trust, reported that it distributed over 90,000 emergency parcels to people across Northern Ireland between April 2023 and March 2024.¹²

There is clear correlation between our demand for publicly funded legal services and the socio-economic challenges that remain within the jurisdiction. Indeed, statistical analysis from the Legal Services Agency NI confirm the close correlation between the provision of Civil Legal Aid Certificates and the most acute levels of social deprivation in Northern Ireland:

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

⁹ [20240430-Economic-inactivity-FINAL-REPORT.pdf \(pivotalppf.org\)](#)

¹⁰ IPSOS and the Trussell Trust, "Hunger in Northern Ireland" (June 2023)

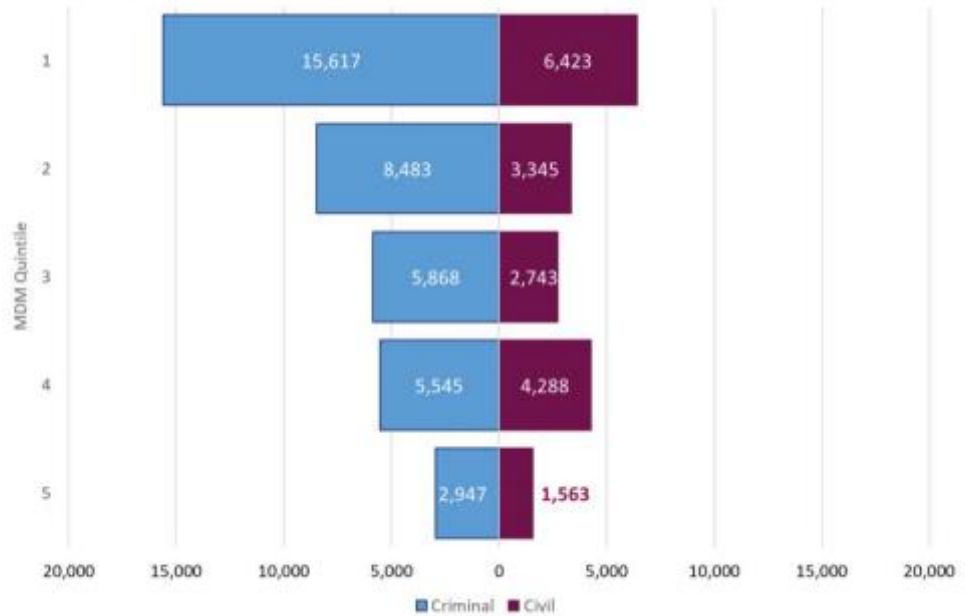
¹¹ PIVOTAL "Economic inactivity in Northern Ireland" (1 May 2024)

¹² [Our work in Northern Ireland - The Trussell Trust](#)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Figure 5.4: Applications granted by multiple deprivation, 2023/24



Source: Legal Service Agency Northern Ireland

There is growing recognition of the requirement for the Northern Ireland Executive to be funded as relative to need and recognition that the region has a significantly higher need for public spending per head of population. A new agreement between the Northern Ireland Executive and the UK Government on the Executive's Interim Fiscal Framework will introduce new needs-based funding, based on the assessment of relative need published by the independent Northern Ireland Fiscal Council¹³.

From 2024-25, if the Northern Ireland Executive un-ringfenced TDEL block grant funding per head falls below 124% relative to equivalent UK Government funding in England per head, a 24% needs-based factor will apply in the Barnett formula.

This is a recognition that differences in population characteristics and socio-economic conditions mean that the cost of delivering the same standard of public services (in terms of a broadly similar level of outcomes) varies between the different parts of the UK, affecting the relative need for public spending.

The Bar of Northern Ireland would encourage the Department of Justice to take a similar approach to the resourcing of publicly funded legal services. There must be a recognition that the legal aid budget is demand led and when comparing spend with other UK regions and nations, the population characteristics and socio-economic conditions of Northern Ireland must be factored in and considered.

¹³ [170524 NIEFF Agreement formatted .pdf \(publishing.service.gov.uk\)](#)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

2.3 Integrated Support and the Community and Voluntary Sector

The Bar of Northern Ireland notes the Department of Justice's inclusion of integrated support as a draft reform opportunity. The voluntary and community sector across Northern Ireland provides a range of excellent and expert services in their areas of competence and there is clear requirement for those services. The distinction between advice and assistance and legal representation should not be convoluted. The Bar of Northern Ireland supports integrated support for people facing issues such as housing and debt. However, this service must not represent second tier of legal representation.

It should also be recognised that the voluntary and community sector across Northern Ireland is facing real pressure under reducing budgets and an increase in community demand for support and services. The Northern Ireland Council for Voluntary Action (NICVA) described in a July 2023 report, "The Cost of Living Crisis"¹⁴, how voluntary and community support services are being scaled back due to a lack of resources, despite an increased level of need in communities.

The Department of Health halved core grant funding to the voluntary and community sector (£3.6m to £1.8m) in 2023/2024 and in July 2024, the Health Minister announced that this 50% cut in core grant funding would be maintained in 2024/2025.

The capacity of community level organisations to deliver legally sound advice and guidance must be considered thoroughly. The Department of Justice must not outsource their obligation to provide publicly funded legal services to an already under resourced and under pressure third sector.

It must also be considered that legal professionals providing publicly funded legal services are independent and subject to stringent regulation and complaints handling procedures. This is a central feature of the provision of effective, efficient and quality legal services. Any outsourcing of publicly funded legal services risks eroding these important oversight, and regulatory standards.

2.4 A Fixed Budget for a Demand Led Service

The opening budget for legal aid has been insufficient and has required in-year allocations since 2010. This has been acknowledged recently by the Justice Minister and her Departmental officials.

In April 2024, Justice Minister Naomi Long MLA told the Justice Committee: "Justice has been historically underfunded, which compounds the problems that we face today, but no Department has received what it needs to maintain even existing services. It is now for the Executive collectively to engage with the UK Treasury to see whether we can improve that situation, even during the course of the year."

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Additionally, Minister Long told the NI Assembly in May 2024 that, “The severity of the financial position for Justice is exacerbated by the combined effects of historical underfunding compared with need for Northern Ireland and the demand-led structure of the majority of services delivered by justice organisations.”

Senior Department of Justice official Deborah Brown painted a similar picture about historic underinvestment in justice, when she told the Justice Committee in February 2024 that:

“The other point is that the Department of Justice budget has, compared to other Departments, had one of the worst settlements over the past 10 years. Over the past 10 years, funding has increased by 43%, but funding for Justice has increased by only 3%. For Health, it has increased by 70%, and, for Education, it has increased by 45%.... Legal aid... has been a challenge for us over the past number of years in that it has never been properly funded. It had a baseline of about £75 million, and that was never anywhere near what was deemed to be needed for business as usual, which was usually about £84 million or £85 million. That was a number of years ago. In 2022-23, we successfully bid for and secured an additional £20 million into that baseline, which brought the baseline up to about £95 million. However, the demand is still exceeding the budget, and the forecast demand this year is £116 million...Legal aid has not been properly funded for a number of years and continues to suffer as a result of that. Indeed, in previous years, legal aid always relied on in-year monitoring to secure the additional funding. We want to try to get the proper baseline for legal aid moving forward.”

Despite its demand led nature, the budget for legal aid is fixed, and funded through the Department of Justice (DoJ) Resource DEL. The fixed budget for legal aid as a demand led service is a systemic and structural problem that gives rise to many of the issues that are evident across the legal aid system, both civil and criminal. In recent years, the inflexibility of the fixed budget has been exposed by efforts to speed to justice and address the Covid related backlog of cases.

The Bar of Northern Ireland strongly supports this policy of increased court activity and has consistently advocated for measures that enable improved access to justice. However, any such policy must be sustainable and adequately funded by government. Payment delay to practitioners is not an appropriate nor lawful means by which to manage the legal aid budget. The Department of Justice will be aware that the Law Society of Northern Ireland and the Bar Council have initiated legal proceedings on the issue of the Departments policy of delaying payment to practitioners.

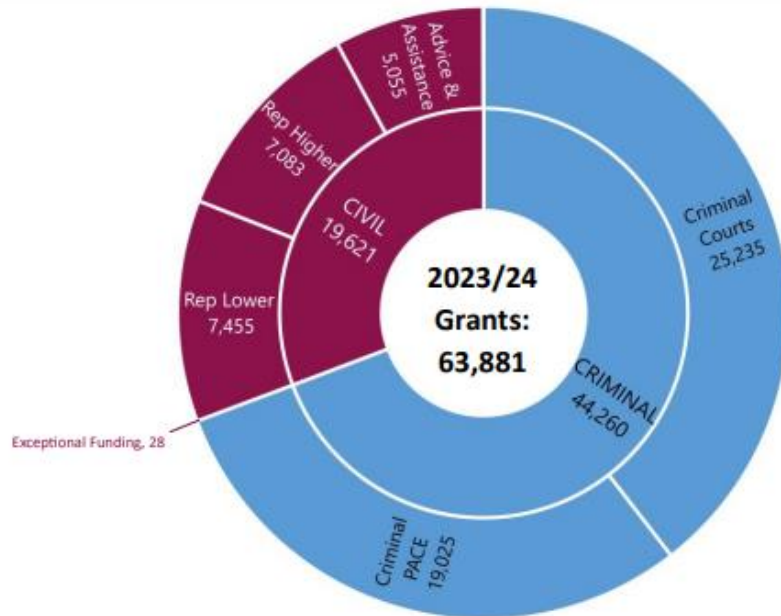
2.5 Volume and Expenditure on Criminal Legal Aid

Data published by the Legal Services Agency in June 2024 shows that in 2023/24, a total of 63,881 applications were granted legal aid. Of these, 44,260 (31%) were civil cases.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

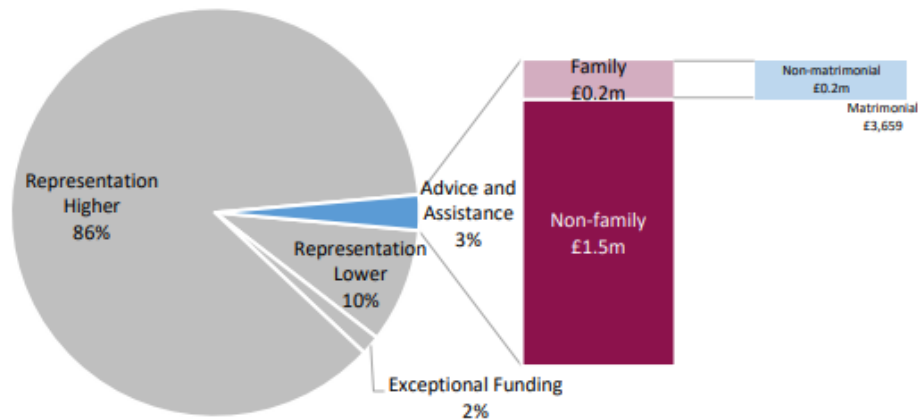
Figure 2.1: Breakdown of legal aid applications granted in 2023/24



Source: Legal Services Agency Northern Ireland

The recent declining trend in overall applications granted has been largely driven by civil applications and coincides with the enforcing of more stringent verification of capital threshold as part of the financial eligibility test associated with applications for civil legal aid services, which has not accounted for the impact of inflation.

Advice and Assistance



Source: Legal Services Agency Northern Ireland

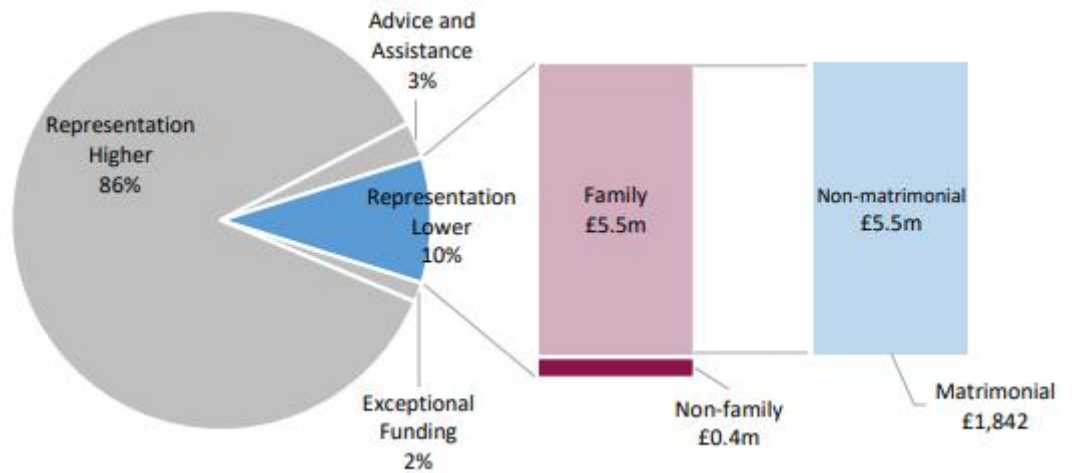
Advice and Assistance cases accounted for 26% of all civil legal aid applications granted in 2023/24. Advice and Assistance non-family cases made up the majority (87%; £1.5m)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

of the total Advice and Assistance legal aid expenditure in 2023/24 with a £0.2m spend on family matters. Of the expenditure on family matters, 2% (£4k) was in relation to matrimonial matters.

Representation Lower



Source: Legal Services Agency Northern Ireland

While Representation Lower cases accounted for 38% of all civil legal aid applications granted in 2023/24, they represented a smaller proportion of the expenditure, at 10% (£5.9m) of the total 2023/24 civil legal aid authorised expenditure. Of the Representation Lower expenditure in 2023/24, the vast majority (93%; £5.5m) was in relation to family cases; while just 7% (£0.4m) was in relation to non-family cases. Of the Representation Lower family expenditure, almost all was in relation to non-matrimonial cases.

These cases often represent more difficult and complex cases taking longer to resolve, involving for example cases under the Hague Convention on international child abduction, and clinical negligence with involvement from a range of expert witnesses.

Representation Higher

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

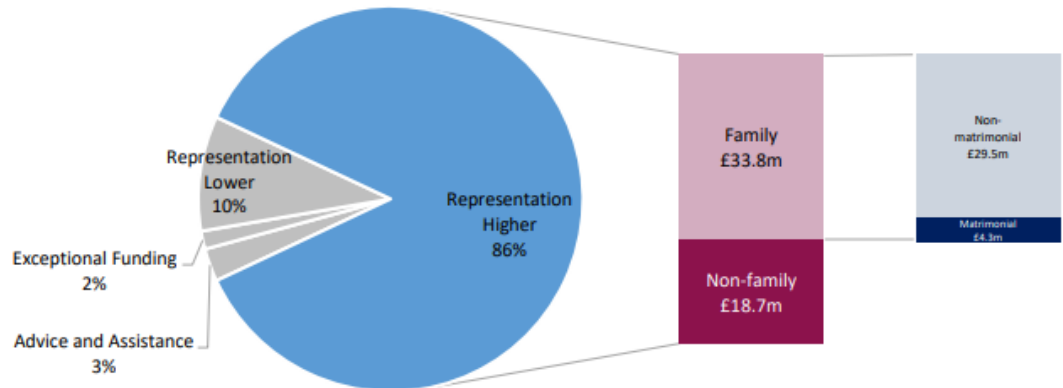
Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024



Annual Representation Higher Authorised Expenditure

Source: Legal Services Agency Northern Ireland

Although Representation Higher cases accounted for 36% of all civil granted applications in 2023/24, they accounted for a larger proportion of the expenditure, at 86% (£52.5m) of civil legal aid expenditure in this year. Almost two thirds (64%; £33.8m) of Representation Higher authorised expenditure in 2023/24 was in relation to family cases; with the remaining 36% (£18.7m) relating to non-family cases. In terms of Representation Higher family expenditure, the majority (87%; £29.5m) was in relation to non-matrimonial cases, while 13% (£4.3m) was in relation to matrimonial cases.

3. Failure to Conduct Statutory Remuneration Reviews

The Civil Legal Services Remuneration Order (NI) 2015 which made provision for a formal review of the prescribed remuneration.

18.—(1) The Department shall keep the general operation of this Order under review to ensure that it is consistent with the requirements of Article 47 of the 2003 Order.

(2) Without prejudice to paragraph (1), the Department shall conduct a formal review of the levels of the prescribed remuneration under this Order at least once in every review period.

(3) Where the Department has conducted a review under this Article, it shall publish the result of the review—

(a) as soon as is reasonably practicable;

(b) in such form as it considers appropriate; and

(c) together with any proposals it may have with respect to the matters reviewed.

(4) When conducting a review under this Article, the Department shall have regard, among the matters which are relevant, to—

(a) any representations made by the Lord Chief Justice, the Attorney General, the Law Society of Northern Ireland, the General Council of the Bar of Northern Ireland and the Director; and

(b) any other representations which it considers to be relevant.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

(5) In paragraph (2) “review period” means the period of three years beginning with the commencement of this Order and each subsequent period of three years.

Despite the clear statutory duty to review remuneration, the first review was due in 2018 and did not take place. Again, the Department failed to discharge their mandatory statutory obligation to conduct a review of the prescribed remuneration in 2021.

Department of Justice officials have acknowledged their failure to conduct remuneration reviews when obliged to do so under statute, yet no restitution or remediation has been made or offered. The failure of conduct statutory reviews has been normalised in the absence of remediation and any explanation as to why reviews were not conducted when they should have been under statute.

In the years since the first review should have been conducted, the impact of the failure of the Department to review fees has been further exacerbated by the rising sharp rate of inflation and price indices. Analysis undertaken by Goldblatt McGuigan on behalf of the Bar of Northern Ireland has shown that cumulative inflation in the period from April 2016 to December 2023 was 32%. This is illustrated in the following graph:

Analysis undertaken by Goldblatt McGuigan on behalf of the Bar has shown that cumulative inflation in the period from April 2016 to December 2023 was 32%. Over the period since 2016, public sector pay has increased by between 13% and 23%.

However, the overall Justice budget has not grown by this rate of inflation and civil legal aid rates have remained static over this period. Goldblatt McGuigan has summarised the impact of inflation upon Legal Aid rates since 2005 as follows:

- Legal Aid fees have decreased significantly since 2005, both in actual terms and in real terms after inflation has been considered.
- Cumulative inflation in the period since March 2005 to December 2023 has been 70%.

Therefore, in real terms, after adjusting for inflation, most fees have reduced by between 53% and 63% since 2005.

3.1 Profession Bearing Higher Costs Alongside Reductions in Income

It is important to emphasise that fees received by a barrister cannot be equated with earnings or a salary in other professions. To run a practice to the standard required to be able to perform legal aid work involves several unavoidable professional costs. These primarily include the cost of:

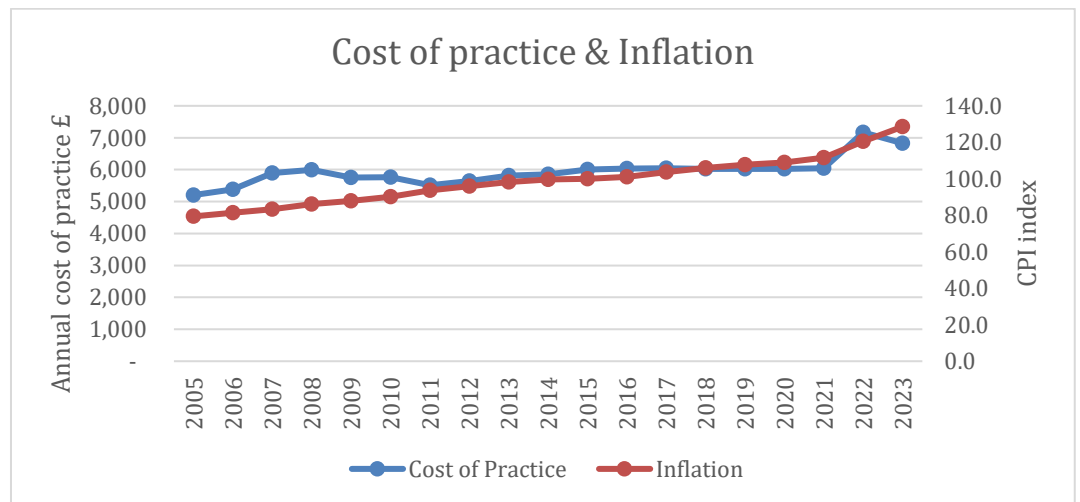
- Bar Library membership which provides research, IT and training facilities.
- Professional indemnity Insurance (typically at a level of up to £1M) which provides protection to any client engaging the services of a barrister.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

- Practising Certificate application fee which covers the cost of an annual comprehensive check that the barrister is complying with all the professional obligations imposed upon them by the Code of Conduct.

Over the period since 2005 the combined cost of these three elements has risen, generally in line with inflation over the same period as can be shown from the graph below:



However, also over this same period, a significant additional debt being borne by entrants to the profession has been the obligation to pay student debt accumulated while gaining the necessary academic qualifications to practice as a barrister. The level of debt being incurred and, also the level of annual repayments required to service this debt have grown significantly over the period since 2005 as shown below:

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

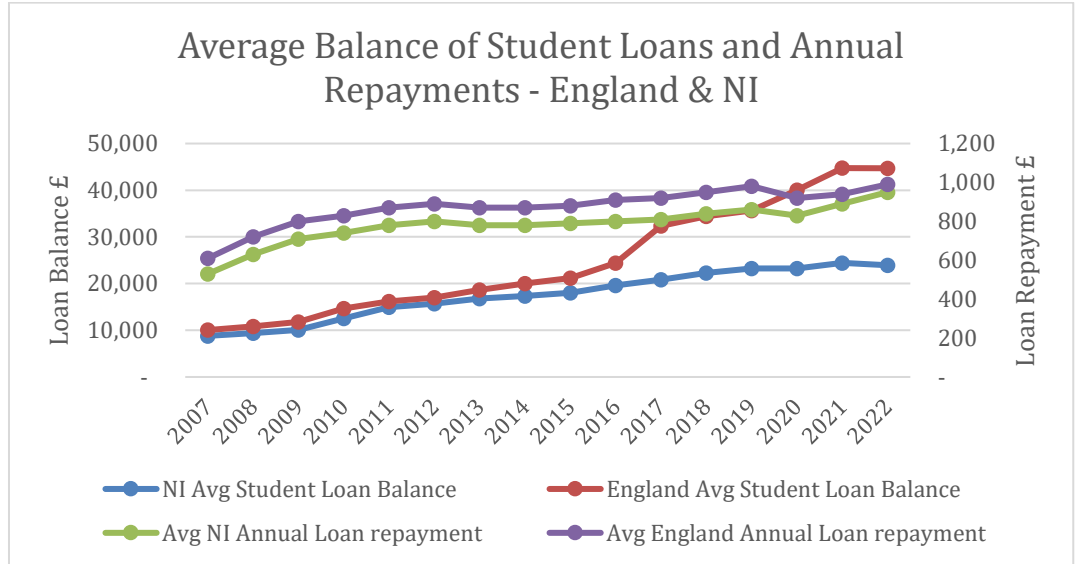
Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024



Figures published in 2024 show that the total outstanding student loan debt in Northern Ireland stands at £5.1bn, increasing by £2.2bn since the financial year 2013-2014. On average, each student who began repayment of their loan in 2024 owed about £25,730. This has increased overall from £8,810 in financial year 2006-07.¹⁵

Therefore, in stark terms it is costing practitioners more to enter the profession and maintain the practising status to the standards required to perform legal aid work and yet they have experienced real terms cut in their income.

We argue that any system that applies a sustained and real terms cut in income for practitioners whilst they also experience unavoidable increases in costs is being placed in immediate jeopardy of being unsustainable.

3.2 Remuneration Issues Disproportionately Impacting Female Practitioners

Practitioners hold the view that they are not fairly and properly remunerated for work undertaken and that the failure to hold regular statutory reviews of fees has compounded the issue. These issues continue to impact all practitioners engaged in civil legal aid work, but the effects of same are particularly prevalent for females and barristers undertaking work in the lower tier courts.

In the family proceedings court tier, where mainly younger members of the Family Bar Association practice, certification for Counsel is not routinely granted. If certification is granted, it is noteworthy to highlight that the fee structure for certified fees has not been reviewed in accordance with Article 18 of The Civil Legal Services (Remuneration) Order (Northern Ireland) 2015. The 2015 Order sought to replicate the remuneration

¹⁵ [Student Loans in Northern Ireland: 2023 to 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

arrangements already then established, bringing together statutory and non-statutory provisions into a single consolidated instrument.

When non-certified work is undertaken by younger members in the Family Proceedings Court, members are routinely asked to provide a comprehensive note of every minute that is spent within the court arena. In order for younger members to retain such comprehensive records, attention is diverted to that task, rather than the task of representing vulnerable members of the public in difficult circumstances.

Furthermore, younger members can provide evidence which demonstrates that they have been assessed as undertaking £5.00 of advocacy work within the said court tier. Such extremely low levels of remuneration do nothing to promote or encourage younger members of the profession to undertake this type of work.

In addition to the above, when younger members are instructed in a court for a local Solicitor whose office is in the said court town, members cannot mark travel for their appearance. Therefore, young Counsel are routinely asked to travel to various areas throughout Northern Ireland to undertake work for which they cannot claim travel costs. There is a real risk that this situation could lead to a divide whereby members of the public in rural areas are not routinely represented by Counsel in their local court.

It should often be noted that particularly complex family law cases can often take up to three years or more to conclude. Practitioners who submit their bill at the end of such cases will therefore be waiting up to three and a half years or more for payment from the date of the commencement of the case. During this time, the impact of inflationary rises and price indices will have had a real term impact of the value of the fee submitted.

Payment delay, more generally, is having a real and percussive impact upon legal professionals, particularly younger female members of the Bar who may not have built up their practice to such a degree that they can withstand the impacts of delays in payment of up to six months.

In choosing to apply payment delays as a budget management measure, the DoJ is placing barristers in a wholly unsatisfactory and unprecedented position whereby they, rather than the public purse, are effectively funding the delivery of a vital demand-led public service. The DoJ's position up until now is that they do not have sufficient budget to pay lawyers within a more reasonable timescale. They do, however, maintain prompt payments to all other suppliers who can expect to typically be paid within 30 days. The Bar of Northern Ireland remains concerned that the outworking of these factors creates a situation where younger members of the Bar divert their expertise to other areas of work, thus leading to a lack of expert advocacy being made available to vulnerable members of society. There is a real concern that the failure to promote, protect and ensure fair remuneration for younger members of the Bar will result in a generation of young lawyers seeking out other areas of work, thus cementing a view

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

that publicly funded legal work, particularly family law work, is undervalued and underpaid.

4. The Changing Nature of Civil Legal Aid Work

In recent years, civil legal aid practitioners have experienced an increased workload. The skill, time and competency required to complete their work have been elevated. Barristers have been asked to do more, for a real term cut in fees while waiting lengthy periods of time to be paid.

The civil justice system has moved on considerably in the past two decades, most notably with the arrival of the digital age. Today, evidence is likely to be found on CCTV, mobile devices, and social media. Issues of disclosure and unused material raise novel and complex questions, and there have been many other significant changes, for example an increase in mental health issues amongst parties, the introduction of new legislation, and, more recently, the impact of digitisation and remote technology.

4.1 Vulnerable Witnesses & the Mental Health Crisis

Northern Ireland has a “relatively high level” of mental health issues, with 1 in 5 people in the general population of Northern Ireland likely to have a mental health problem during their lives.¹⁶ However, there are still higher rates of social and health issues amongst those who encounter the justice system than those in the general public.¹⁷

This necessitates a more careful and skillful approach on the part of the civil practitioner, navigating their way through the application of special measures and equipping themselves with the necessary skills and expertise in working with vulnerable witnesses and defendants.

The modern approach to cross-examination of vulnerable witnesses also necessitates greater preparation time and application of skill. Questions must be carefully considered to ensure fairness and often submitted in advance. Ground rules hearings and the involvement of Registered Intermediaries require the consideration of, often lengthy, reports, again increasing the skill involved dedicated to the case on the part of the practitioner.

4.2 Children in Care & Unaccompanied Minors

Professor Ray Jones in the Northern Ireland Review of Children’s Social Care Services Report¹⁸ dated June 2023, records that between March 2017 and March 2022 in

¹⁶ Northern Ireland Audit Office, “Mental Health in the Criminal Justice System” (2019) 1 in 5 figure was provided by the Chief Medical Officer.

¹⁷ Ibid.

¹⁸ [Report of the Independent Review of Children's Social Care Services in Northern Ireland | CSCS NI Review \(cscsreviewni.net\)](https://www.cscsreviewni.net/)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Northern Ireland, there has been an 8% increase in the number of children in need, a 10% increase in children on the Child Protection Register and a 21% increase in the number of children in care.

In respect of children in care, for the year 2021-2022 there has been a 3% increase compared to 2020-2021 and there has been a 37% increase within 10 years and 56% increase since 1999. As of 31st March 2023, 3,801 children and young people were in care in Northern Ireland, the highest number since the introduction of The Children (Northern Ireland) Order 1995.¹⁹

The increased number of children and young people requiring support and care places sustained pressure on the care system as a whole and upon practitioners working in this specialist area. Professionals working in other parts of the system have expressed the difficulties they face in delivering family and childcare services, with social workers in the Belfast Trust recently taking strike action over excessive workload and stress.²⁰

Ultimately, in order to protect children and families in these difficult circumstances, we must be able to retain the professionals engaged in family law with the basics of fair remuneration and timely payment, so that they are enabled to serve the best interests of the court and wider society.

4.3 The Changing Legislative Landscape

Good laws don't work without effective access to justice. The Bar of Northern Ireland will never take a political stance on any piece of legislation, but we assert that there must be access to justice for legislative changes to take effect.

This is exemplified by the introduction of Section 28 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 which provides access to civil legal aid for victims of domestic abuse.

Specifically, section 28 waives the financial eligibility rules that would otherwise apply in determining a person's application for civil legal services to enable them to be represented as a respondent in proceedings under Article 8 of the Children (Northern Ireland) Order 1995.

From February 2022 until November 2023, the number of cases where a solicitor had applied for the waiver of the financial eligibility rules on behalf of a client came to 25 cases. This was described in a Criminal Justice Inspectorate Northern Ireland²¹ (CJINI) report as "Incredibly low". CJINI furthermore urged the Department to Justice to continue in their efforts to raise awareness of the waiver amongst the general public.

¹⁹ Department of Health, Children's Social Care Statistics for Northern Ireland 2022/2023.

²⁰ [NIPSA members begin 48-hour strike action over staff shortages - BBC News](#)

²¹ [Review of the effectiveness of Part 1 of the Domestic Abuse and Civil Proceedings Act \(Northern Ireland\) 2021 \(cjini.org\)](#)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

CJINI described DoJ's awareness raising efforts as, "unlikely to be impactful unless it was relevant to those receiving the messages at the point of being made aware of the waiver and needing to use it". The Bar reiterates the findings of CJINI in this regard and encourages DoJ to take a proactive approach which ensures that those eligible for civil legal aid under Section 28 are aware of their rights and have access to justice.

The Domestic Abuse and Civil Proceedings Act (NI) 2022 represents a significant development in the local legislative landscape. Despite most offences under the Act being criminal in nature, the new legislation will directly impact civil practice and the complexity of many matters dealt with by civil law practitioners. This will require increased skill on the part of practitioners in applying the new legislation and keeping up to date with emerging caselaw. There must also be access to the family courts for victims of survivors of domestic abuse, particularly when considering the prevalence of domestic abuse across Northern Ireland.

The importance of access to the Family Court for victims and survivors of domestic abuse was evidenced in a national survivor study in which 49% of victims and survivors indicated that they wanted legal support or advice for family proceedings compared to 42% who wanted access to legal support for criminal court proceedings.²²

Immigration and asylum is another complex area of law with significant and multiple legislative developments in the last ten years. Three pieces of primary legislation have fundamentally altered the landscape of Asylum and Immigration Law in the form of the Nationality and Borders Act 2022, the Illegal Migration Act 2023 and the Safety of Rwanda (Asylum and Immigration) Act 2024.

Immigration is a reserved matter, but the Department of Justice must consider the impact of Westminster legislation which alters the complexity of immigration law on a local level and the requisite skill and time applied by practitioners in this developing area of law.

The immigration and asylum system is exceptionally complex as it stands, with particularly intricate matters involving, for example, an asylum appeal with no Country Guidance or Country Policy Information Notes to guide, an Article 8 appeal involving unwell children or an Article 3 case based on health grounds, necessitating considerable and exceptional amounts of work.

The free movement of people under Article 3 of the Treaty on European Union (TEU) and globalisation more generally has also had an impact on family law in Northern Ireland with court orders made in Northern Ireland dealing with parental responsibility enforceable throughout the European Union (with the exception of Denmark).

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

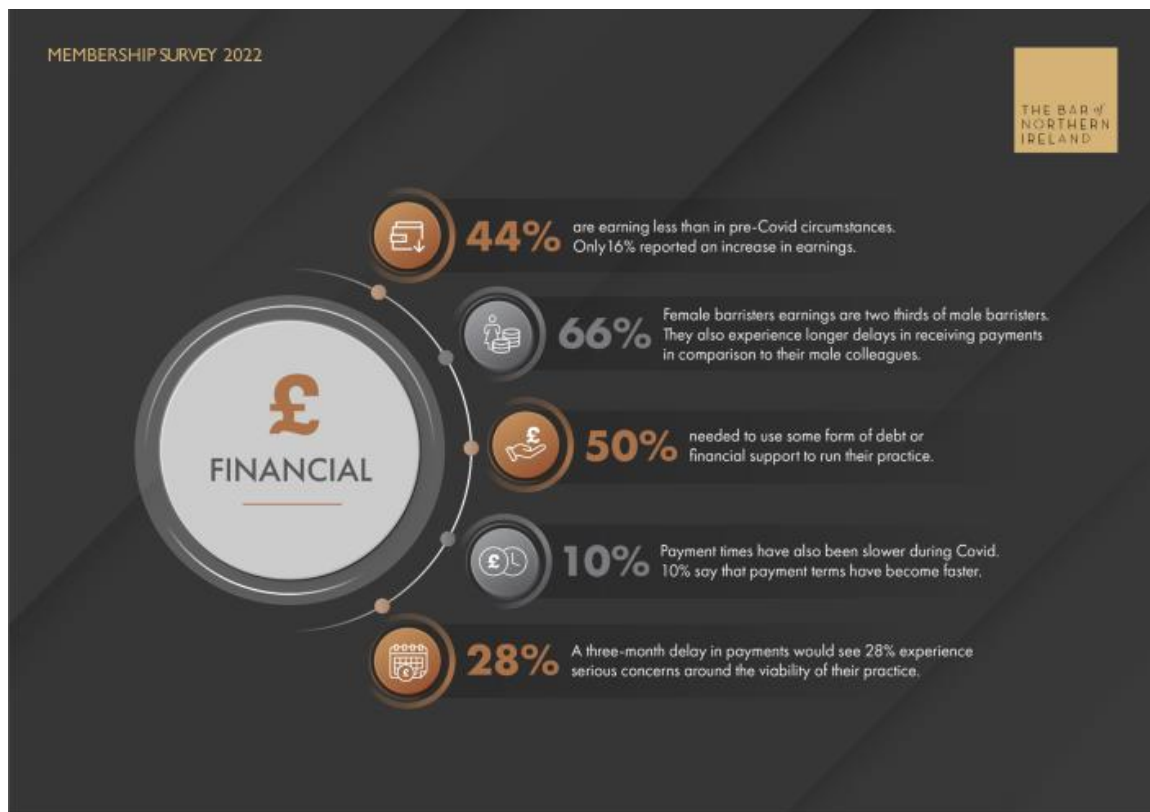
The Bar of Northern Ireland is also aware that the Adoption and Children Act (Northern Ireland) 2022 is due to be implemented in full. The Bar of Northern Ireland urges the Department of Justice to pre-prepare for significant new measures under the Act such as Special Guardianship Orders which will require involvement from family law practitioners.

5. Impact on the Barrister Profession

The Bar of Northern Ireland commissioned a major independent membership survey in 2022 which examined a range of different impacts and trends amongst the profession. It should be noted that the survey involved barristers involved in a range of practice areas. The survey, however, does provide a useful assessment on key issues for the profession, and barristers engaged in civil legal aid work.

One of the key areas examined was the financial sustainability of barrister practices. It is important to stress that this survey was taken when it was expected that a review would be taken before the peaks in inflation and extensions in payment times that have since been experienced during 2022 and 2023.

The survey returned the following headlines in relation to financial realities:



91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

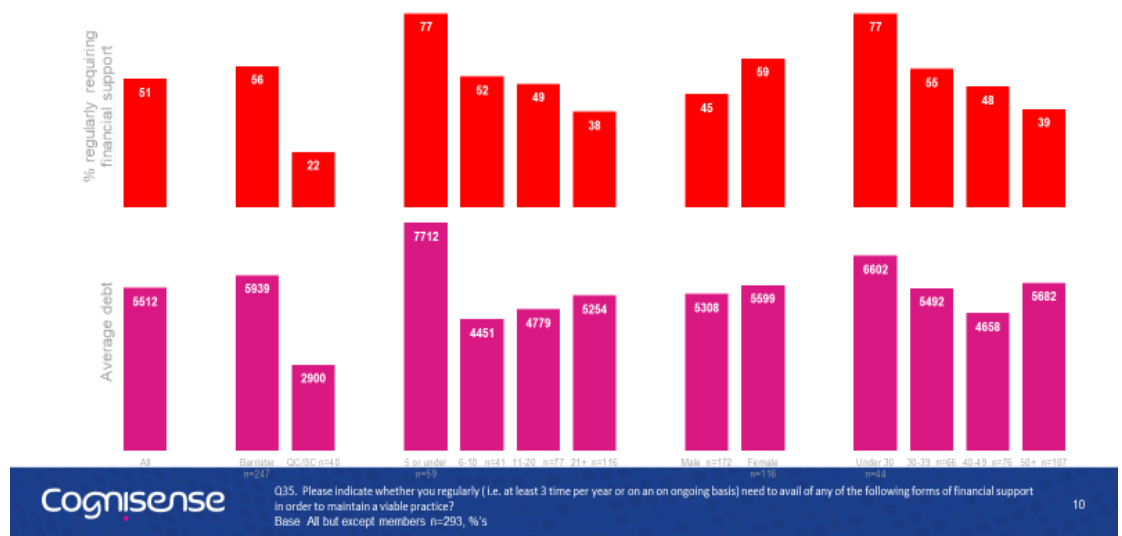
Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Barristers are taking on increasing levels of debt to support their practice. Female barristers under the age of 30 have the highest debt burden of any of the barrister population.

Practice debt

Half of the membership have one or more forms of financial support. Taking the mid point of each band and calculating an average for all members whether they use or do not use each form of support, the average indebtedness is just short of £6,000. Barristers and those with recently established practices have higher levels of borrowing.



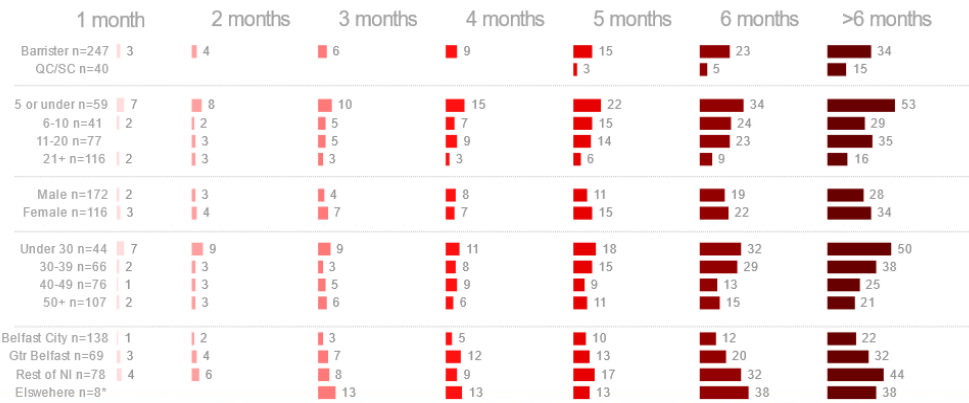
The survey also highlighted the acute sensitivity of various barrister practices to further payment delays. To repeat, this survey was taken before the peaks in inflation and extensions in payment times that have since been experienced during 2022 and 2023. It highlighted that payments delays would most affect female practitioners under 30 years old and living outside of Belfast.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

% Practices that would cease to be viable

Ceasing practice is something that 1 in 13 (7%) of those aged under 30 would anticipate if fees were delayed for even 1 month. 1 in 5 (18%) young practitioners out of business



Cognisense

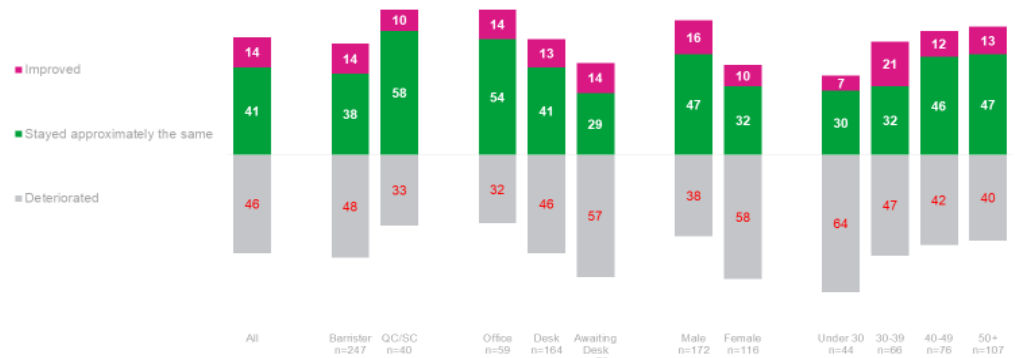
Q30b. Please indicate the impact that the following potential scenarios regarding further delays in payment times would have upon your practice? Base n=290, %'s

12

The profession is experiencing a decline in its wellbeing. Almost half (46%) of the barrister population reported that their wellbeing had deteriorated over the past three years. This figure was higher for female barristers (58%) and higher still for barristers under the age of 30 (64%).

State of wellbeing compared to 3 years ago

Almost half of the Bar membership have seen a deterioration in their wellbeing, where 1 in 7 have seen an improvement in their wellbeing relative to 3 years ago. QCs, males and older practitioners appear to have been least susceptible to a deterioration in their circumstances.



Cognisense

Q27. Which of the following statements best describes how you feel about your overall wellbeing as a result of your working environment? Base All except exempt members n=293, %'s

14

The table below shows the number of barristers leaving the profession on an annual basis, analysed by their years of practice at the time of leaving. The data shows an alarmingly high proportion of young and recently qualified barristers leaving the profession indicating the difficulty in building a practice but also the other employment opportunities that are available to this cohort.

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

It is also significant to note how the trend of leavers peaked in the years between 2015 and 2017 coinciding with the austerity driven Legal Aid reforms highlighted earlier and again between 2021 and 2022 following the impacts of Covid and the added financial strain that this caused.

No members	Years service				Grand Total
	0-7	8-19	20-39	40+	
Year left					
2007	8	4	1	2	15
2008	17	2	3	1	23
2009	10	2	4		16
2010	6	7	1		14
2011	5	4	6		15
2012	11	3	5		19
2013	13	4	5	2	24
2014	17	7	8	1	33
2015	29	8	8	4	49
2016	19	8	11	3	41
2017	19	7	9	6	41
2018	15	6	6	3	30
2019	5	3	4	2	14
2020	3	9	5		17
2021	16	12	8	5	41
2022	15	3	4	7	29
2023	7		9	7	23
Grand Total	215	89	97	43	444

Our 2022 membership Survey revealed that just over 1 in 5 members anticipated an imminent change in their practice. The top reason given was in relation to workload/stress. Three of the top five reasons for doing so were related to financial issues including concerns about financial viability; a need to improve earnings/fees and the effects of legal aid cuts.

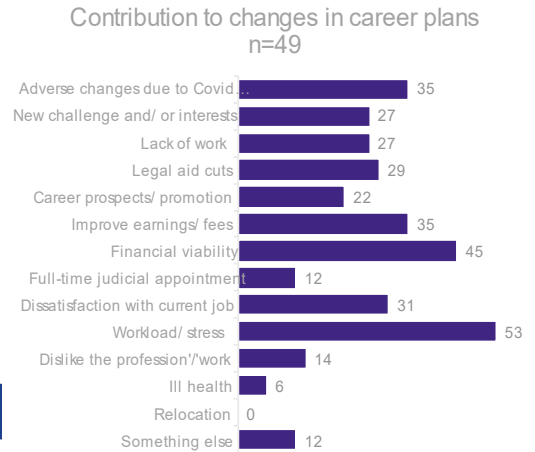
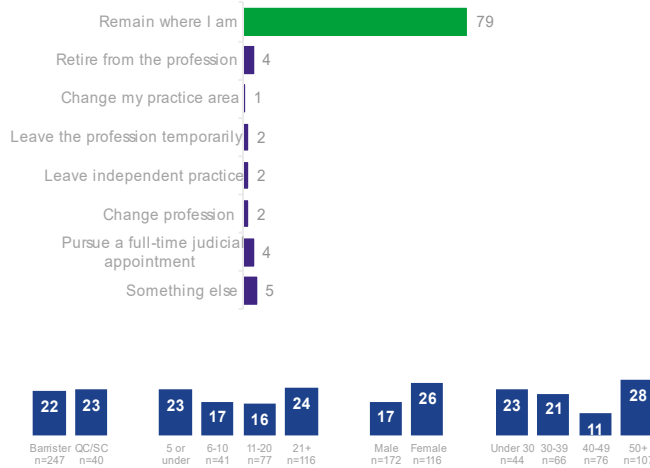
The data again shows that these sentiments were most significantly expressed by female barristers and, excluding those who are seeking to retire, those most likely to change career were those aged under 30 or with less than five years' practice.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Future intentions

Just over 1 in 5 members anticipate an imminent change in the practice, those expecting to make a change in their working practices are more likely to be older and retiring (11%) or female.



Cognisense

Q31. What would you say are your career intentions over the next two years? I intend to...
Base n=286, %'s

16

Barristers leaving civil legal aid practice in this way would be a disaster for access to justice in this jurisdiction. The Department of Justice must appreciate the criticality of retaining a practitioner based engaged in legal aid practice by meeting the very basic requirements, paying practitioners within a reasonable timeframe, and offering fair remunerations, which reflects the time, skill, and competency of the practitioners.

6. Learning from Other Jurisdictions

The Department of Justice must learn the lessons from the implementation of civil legal aid reform from other jurisdictions, particularly England and Wales, where the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has been recognised as having had a devastating and longstanding impact upon the legal aid system.

6.1 England and Wales - Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

In England and Wales in 2012, the UK Government implemented the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This introduced “devastating cuts”²³ to legal

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

²³ Asher Flynn and Jacqueline Hodgsons, “Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Needs” (2017, Hart Publishing) Chapter 1: “Access to Justice and

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

aid in England and Wales as it sought to reduce the legal aid budget by £350 million. It reduced the scope mainly in the areas of family law, immigration, welfare benefits, employment, and clinical negligence.²⁴

The then government was clear that LASPO was intended to reduce the legal aid budget as part of an overall UK austerity programme. However, post implementation analysis of LASPO failed to demonstrate value for money, with instead evidence of devastating and costly damage inflicted upon the legal and justice system across England and Wales. According to figures from the Ministry of Justice, shortly after the introduction of LASPO, 63% of individuals entitled to legal aid in 2012 were no longer in the same position in 2013.²⁵

The legislation decreased expenditure on legal aid in England and Wales in an immediate and crude manner - however, it could not be demonstrated that the changes delivered better overall value for the taxpayer.²⁶ The National Audit Office in 2014 found that the legislative flaws were the result of the UK Government's short-sightedness as it rushed through legislative changes without any adequate underpinning evidence.²⁷

This evidence was reinforced by a 2024 National Audit Office (NAO) Report assessing Government's management of legal aid and making the following key findings.²⁸

- MoJ still does not know the full costs and benefits of LASPO as it has not made progress in understanding how the reforms may have affected costs in other parts of the criminal justice system and wider public sector.
- MoJ recognises that changes introduced by LASPO reduced access to early advice and unintentionally reduced publicly funded mediation referrals.
- The proportion of the population eligible for legal aid support has reduced, as MoJ has not yet changed financial eligibility thresholds.
- The available evidence suggests that limited provision in some areas of the country may make it harder to access legal aid.
- Demand for criminal and some types of civil legal aid is likely to increase at a time when the market is in a fragile position to respond.

Legal Aid Cuts: A Mismatch of Concepts in the Contemporary Australian and British Legal Landscapes”.

²⁴ Ministry of Justice, “Reform of Legal Aid in England and Wales: the Government Response” (June 2011)

²⁵ Cited in Flynn (n 1)

²⁶ House of Commons Justice Committee, “Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012” Eighth Report of Session 2014-2015 (House of Commons, 2015) < <https://committees.parliament.uk/committee/102/justice-committee/news/185212/civil-legal-aid-cuts-failed-to-target-help-where-needed/>>

²⁷ Cited in Flynn (n 1)

²⁸ [Government's management of legal aid \(Summary\) \(nao.org.uk\)](https://nao.org.uk/government/s-management-of-legal-aid-summary)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

The then Government did receive fair warning on the potential consequences of LASPO before the implementation of the legislation. The President of the Supreme Court, Lord Neuberger forewarned in 2013 that “if you start cutting legal aid, you start cutting people off from justice... and that’s dangerous”.²⁹

Similar concerns were shared in the successful passing of three motions of regret in the House of Commons. Lord Bach had the foresight to state that LASPO would “demean the reputation of our legal system” adding that “the behaviour of the Government towards Parliament, towards this House in particular, and towards its citizens is unacceptable”.³⁰

There have been various documented effects of the reduction in scope through LASPO. This includes the creation of legal advice deserts, limited focus on early interventions, sharp increases in litigants in person, increased burden on the already congested court system, and an overall increase in unmet demand for services which has placed further pressure on those services that remain and the individuals that provide them.³¹ There was also broader social consequences stemming from the legislation, including the impact on the degree of diversity and level of expertise in the legal profession, as explored further in the following section.³²

6.2 Impact on the Bar of England and Wales

One of the key consequences of LASPO, relevant to our discussion, is the impact the legislation has had on the degree of diversity, sustainability and viability of practice across the legal profession.

Maintaining a supply of qualified staff in the legal aid sector is crucial to ensuring the sustainability of the profession.³³ However, there has been a sustained problem with recruitment and retention of barristers engaged in legal aid work, which has been consistently amplified by those in the profession, and intensified post-LASPO.³⁴ The level of student debt, combined with stagnant rate of pay, provide little incentive to choose a career in the legal aid profession, or remain in the sector.³⁵

In 2018, the Bar Council of England and Wales surveyed practitioners and found that, since the implementation of LASPO, 25% of respondents had stopped doing legal aid

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ House of Commons Committee of Public Accounts, “Value for Money from Legal Aid” 33rd Report of Session 2023-24 (May 2024)

<<https://committees.parliament.uk/publications/44957/documents/223163/default/>>

³⁴ HoC Justice Committee (n 4)

³⁵ Ibid.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

work and 48% did less legal aid work than before.³⁶ In 2024, reflecting on these figures, the Bar Council noted that in the six years since this survey, “many family practitioners have moved from legal aid practices into private work, junior family barristers are leaving the bar altogether, and there are obvious concerns about retention of women at the bar and diversity more generally”.³⁷

A further report in 2021 published by the Bar Council of England and Wales on civil legal aid indicated that senior practitioners in civil legal aid are now earning less than they were at the start of their careers. Their report outlined that “legal aid barristers are finding that in order to support their practice they are having to work all-nighters, weekends and 60- or 70-hour working weeks”.³⁸

This was reinforced by the Bar of England and Wales’ “Barristers’ Working Lives Survey, Barrister Wellbeing (BWB) Analysis” (January 2024) found that barristers working in family law had significantly lower overall wellbeing compared to all other Practice Areas, except for the criminal bar. This is one of several impacts experienced by the Family Bar Association as the result of years of under investment and reductions in scope, with the Bar of England and Wales noting the following:

- a) Lowest overall wellbeing compared to other civil practice areas.
- b) Barristers leaving the area of practice and moving to privately funded work.
- c) Leaving the profession altogether.
- d) Suffering significant financial hardship.
- e) Issues of diversity at the Bar.

In evidence provided to the House of Commons Justice Committee in 2024, it was indicated that it is becoming harder to obtain legal aid and that providers cannot meet demand.³⁹ The Ministry of Justice’s survey of civil providers in September 2023 found that 80% of providers were experiencing more demand than capacity, and among those providers an average of 26 eligible cases each were turned away in the month proceeding the survey.⁴⁰ The Justice Committee also received evidence from the Independent Provider of Special Education Advice which reported that in over 20% of cases they supported, the person was eligible for legal aid but had been unable to find a provider.⁴¹

³⁶ The General Council of the Bar of England and Wales, “Bar Council submission to the Ministry of Justice LASPO Post-Implementation Review” [2018] pg. 12.

³⁷ The General Council of the Bar of England and Wales, “Review of Civil Legal Aid – Call for Evidence: The Bar Council’s Response” [2024]

³⁸ The Bar Council of England and Wales, “Running on Empty: Civil Legal Aid Research Report” (January 2021) <<https://www.barcouncil.org.uk/resource/running-on-empty-civil-legal-aid-full-report.html>>

³⁹ House of Commons Committee of Public Accounts, “Value for Money from Legal Aid” 33rd Report of Session 2023-24 (May 2024)

⁴⁰ Ibid.

⁴¹ Ibid.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Additionally, the PA Consulting Provider Survey Report published in 2024 noted that only 51% of legal aid contracts were reported to be profitable, and 40% of the professionals indicated that they were looking to leave the sector within the next five years.⁴² It has also been noted that senior solicitors are leaving the profession, and less qualified and experienced solicitors are taking on higher caseloads. This has knock-on Counsel, who are consulted and expected to provide unpaid advice and input on a week-to-week basis on cases on which they are instructed.⁴³

Furthermore, a report published by the Bar of England and Wales in 2021 indicated that senior practitioners in civil legal aid are now earning less than they were at the start of their careers. Their report outlined that “legal aid barristers are finding that in order to support their practice they are having to work all-nighters, weekends and 60- or 70-hour working weeks”.⁴⁴

As evidenced above, LASPO has corroded the viability of the barrister profession, resulting in many legal aid practitioners leaving practice, having to move to other practice areas, and suffering financial hardships.

This has disproportionately impacted junior barristers, women, people of colour, and those from lower socio-economic backgrounds without wealth to fall back on, which has had a knock-on effect on the diversity at the Bar. This can be encapsulated by a contribution of a participant in the most recent Legal Aid Census, in 2021, which stated: “Legal aid work simply isn’t as lucrative as non-legal aid routes. People in higher classes can sacrifice a dip in a paycheck because their family can help, people in higher classes can sacrifice their summer to an unpaid internship at a legal aid firm because their family can sustain them financially over the summer. I simply can’t do that. I must earn money in the summer and I have my enormous debts to pay off in the future.”⁴⁵

6.3 Legal Aid Deserts

The removal of areas of practice from scope, and the drain of practising specialists in the sector, has resulted in what have become known as “legal aid deserts”.⁴⁶ These can be described as large geographical areas with no legal aid provider for a particular category of law.⁴⁷

It has been noted that as fee rates become unsustainable for the legal service market, and fewer people are able to access legal aid to pay for legal advice, challenges arise

⁴² PA Consulting, ‘Survey of civil legal aid providers in England and Wales’ [2024].

⁴³ Bar of Eng & Wales (n 17)

⁴⁴ The Bar Council of England and Wales, “Running on Empty: Civil Legal Aid Research Report” (January 2021) <<https://www.barcouncil.org.uk/resource/running-on-empty-civil-legal-aid-full-report.html>>

⁴⁵ Denvir (n 19)

⁴⁶ The Bar Council of England and Wales, “Access denied: The state of the justice system in England and Wales in 2022” (November 2022)

⁴⁷ Justice Committee (n)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

around the retention of experienced practitioners, as solicitors' firms close and barristers move to other areas of work.⁴⁸ These advice deserts are then created where people in certain geographic areas do not have local access to legal aid providers, with the situation described as taking on a "snowball effect".⁴⁹

Analysis carried out by the National Audit Office demonstrated that sustained decreases in the number of legal aid offices resulted in a smaller proportion of the population residing near a legal aid office.⁵⁰ Their analysis demonstrated that for most categories of civil law, less than 50% of the population was within 10 kilometres of a legal aid office in 2022–23.⁵¹ Legal Aid Agency data showed that the number of provider offices starting civil legal aid work has halved from over 4,000 in 2009-10 to less than 2,000 in 2022-23.⁵²

As a result, Legal Service Board data suggested in 2021 that 3.6 million people in England and Wales had an unmet legal need involving a dispute every year.⁵³ NAO analysis demonstrated sustained decreases in the number of legal aid offices, which means that a smaller proportion of the population are now within 10 kilometres of an office in most categories of civil law.⁵⁴ People living in cities are generally within the closest range of a housing legal aid office, but more remote areas such as Cornwall are more than 30 kilometres from their nearest office.⁵⁵

The proportion of the population in England and Wales within 10 kilometres of a legal aid office for housing advice, fell nine percentage points, from 73% in 2013-14 to 64% in 2022-23.⁵⁶ The proportion in 2022-23 falls to 57% when looking only at housing offices that actively took on new cases. Likewise, the proportion of population within 10 kilometres of a legal aid office for family law fell by 4% from 79% to 75%, while the proportion of population within 10 kilometres of legal aid advice for immigration fell by 7% to 32%.⁵⁷

Additionally, the number of local authorities with no local legal aid office has increased in most categories of civil law.⁵⁸ For example, in housing law, 136 local authorities in

⁴⁸ The Bar (n 24)

⁴⁹ Ibid.

⁵⁰ National Audit Office, "Government's management of legal aid" Session 2023-24 HC 514 (February 2023) < <https://www.nao.org.uk/reports/governments-management-of-legal-aid/> >

⁵¹ Ibid.

⁵² Ministry of Justice and Legal Aid Agency, "Legal Aid Provider Dashboards" cited in the Law Society and Frontier economics, "Research on the Sustainability of Civil Legal Aid: Final Report" (May 2024)

⁵³ Written evidence from The Legal Services Board produced in House of Commons Justice Committee "The Future of Legal Aid" 3rd Report of Session 2021-22 HC 70 (July 2021)

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

2013-14 did not have a locally based office providing legal aid, and by 2022-23 this had increased to 183.⁵⁹ For multiple areas in England & Wales, particularly in the South West, the nearest housing legal aid office is now more than 20 kilometres further away than it was in 2013-14.⁶⁰

In total, the number of civil legal aid providers in England and Wales has dropped from 4,178 in 2012-2013 to 2,520 in 2022-23.⁶¹ The Law Society has confirmed that over the last decade the number of legal aid firms has nearly halved, and have projected that by 2025, the number of legal aid providers could drop by a further third.⁶²

6.4 Litigants in Person (LIP)

Socio-legal research has documented the widespread removal of legal aid scope through LASPO “exacerbated what was an already-complicated context” in terms of LIP in court proceedings.⁶³ The LASPO reforms impaired the viability of legal aid work and at the same time induced greater demand for free advice and support.⁶⁴

LASPO has been conceptualised by academics as “flying in the face” of evidence about the problems that LIPs experience in court processes.⁶⁵ They note that LASPO “marked the beginning of a new era in which very few are able to effectively access and use family law” and overburdens the court system with “the strain of increased numbers of LIPs who lack the necessary skills, resources, and attributes to participate in the court processes”.⁶⁶

The National Audit Office reported in 2014 a 30% year-on-year increase in family court cases in England and Wales where neither party is represented.⁶⁷ Judges estimated that these cases take 50% longer than those with representation.⁶⁸ This is partly due to their lack of knowledge and understanding of the law and the processes.⁶⁹

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ The Law Society (n 1)

⁶² Ibid.

⁶³ Jess Mant, “Placing Litigants in Person at the Centre of the Post-LASPO Family Court Process” [2020] Child and Family Law Quarterly 32(4), 421.

⁶⁴ Ibid.

⁶⁵ Anne Barlow, “Mapping Paths to Family Justice: Resolving Family Disputes in Neoliberal Times” (Palgrave, 2017) cited in *ibid.*

⁶⁶ Mant (n 24).

⁶⁷ The National Audit Office, “Implementing reforms to civil legal aid” (November 2014) HC 784 Session 2014-2015 < <https://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf> >

⁶⁸ Mant (n 24).

⁶⁹ S. Wong and R. Cain, “The impacts of cuts in legal aid funding of private family law cases” [2018] Journal of Social Welfare and Family Law 41.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

A representative from Resolution, an organisation consisting of family justice professionals, outlined to the House of Commons Justice Committee in July 2021, that LIPs often are unable to put a bundle together, which leaves judges trawling through attachments which takes up time.⁷⁰ Additionally, she explained that hearings often take longer because arguments are not as focused or as relevant as they would be if they were presented by lawyers.⁷¹ Jess Mant further explained to the Justice Committee that the growing number of LIPs has had “an effect on, basically, how the entire court system operates”.⁷²

There is concern that an increase in LIPs in the Northern Ireland context could exacerbate already chronic court delays. The most recent data on numbers of LIPs in NI was recorded between 2012-2017 and demonstrated that LIPs formed a steady 20% in the litigant population, with the highest volume of all participants in any one year recorded in civil proceedings.⁷³

The 2022 report also indicated that the most obvious and common issue that resulted in individuals self-representing themselves was an inability to fund legal representation and not being eligible for legal aid.⁷⁴ This was also recorded as the reason for self-representing in a report by Ulster University in 2018.⁷⁵

6.5 Wider impacts of LASPO

HM Treasury’s Managing Public Money framework stresses the importance of a whole-system approach to assessing good value from public funds. However, the House of Commons Justice Committee warned in 2015 that the Ministry of Justice was failing to identify and address the wider costs of its legal aid reforms, and in 2024, they noted that the Ministry of Justice has still not made sufficient progress in doing so.⁷⁶

In response to a consultation undertaken by the National Audit Office, stakeholders described examples of which demonstrated costs previously covered by legal aid shifting to other areas of Ministry of Justice or wider government.⁷⁷ Responses included:

- **Increased pressure on courts** due to an increase in LIPs who lack understanding of the judicial system, requiring more support from judges and court staff.

⁷⁰ House of Commons Justice Committee “The Future of Legal Aid” 3rd Report of Session 2021-22 HC 70 (July 2021)

⁷¹ Ibid.

⁷² Ibid.

⁷³ Grainne McKeever, Lucy Royal-Dawson, Eleanor Kirk, John McCord, “The snakes and ladders of legal participation: litigants in person and the right to a fair trial under Article 6 of the European Convention on Human Rights” [2022] *Journal of Law and Society*

⁷⁴ McKeever (n 1)

⁷⁵ McKeever (n 2)

⁷⁶ HoC (n 19)

⁷⁷ NAO (n 2)

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

Stakeholders argued LIP cases take longer, require more hearings and result in more contested hearings and adjournments.

- **Increased pressure on health services** due to housing conditions not being rectified through legal action, thereby causing health problems, e.g., mould causing respiratory issues. Stakeholders argued that when cases are not rectified through legal means, this can also have a mental toll on the individuals affected, in addition to the physical impacts.
- **Increased pressure on local authorities** as local authorities often help those whose immigration status is in limbo, such as funding free advice to help resolve immigration status. Additionally, local authorities provide expensive temporary accommodation to those who were evicted because they were in arrears and couldn't challenge loss of welfare benefits.

Similarly, the Bar Council of England and Wales contends that the combination of the reduction in scope of family legal aid introduced by LASPO, and the consequential delays in the courts system has likely meant that there are more broken families, more pressures on safeguarding agencies, schools, and health services, including Adult Mental Health Services and Child and Adolescent Health Services.⁷⁸

7. Conclusion & Summary

Civil legal aid can be a complex, challenging and vital area of law. Yet it can also be undervalued and while the wider public may have a degree of knowledge and awareness of how our criminal courts operate, the same cannot be said of the important matters often at stake in civil proceedings.

For example, Sir John Gillen reflected that nature of the family courts when he noted: "...the family justice system embraces those who are amongst the most vulnerable and at times dysfunctional individuals in our society and who are caught up in the high octane atmosphere of the family court system."⁷⁹

Barristers have been delivering access to justice in this atmosphere at 130% capacity since the pandemic to assist in dealing with covid related delays. Despite this, legal professionals will often wait longer than ever before to be paid for work for work already completed and receive rates that do not reflect the time, and skill that they have deployed, nor the complexity of the case.

The lesson is clear from England and Wales following the disastrous implementation of LAPSPO. The Department of Justice have a blueprint of how not to do civil legal aid reform. The LAPSPO lessons must be learned and replicating LAPSPO measures in this

⁷⁸ Bar of Eng & Wales (n 17)

⁷⁹ Gillen Review Group's Report on Family Justice, "Review of Civil and Family Justice in Northern Ireland", (September 2017) Office of the Lord Chief Justice, page 1.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

jurisdiction will represent a conscious decision to inflict decades of generation harm upon our system of civil justice.

The Bar Council of England and Wales have been campaigning for a reversal of LAPS0 since it was first implemented and have detailed its impact in a measured manner: “Since the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force in April 2013, the nature of work and remuneration around civil and family legal aid have changed considerably. Many areas were taken out of scope, and changes to the means testing for areas still in scope meant that many people could no longer access legal aid funding for their legal issues. Coupled with real term cuts in remuneration, these changes have had a profound impact on the legal services sector, including the Bar.”⁸⁰

The Chair of the Bar Council of England and Wales, Sam Townend KC was forthright when detailing the impact of LAPS0 on the family courts:⁸¹

“The problem in family matters is a structural one... It is hard to resist the conclusion that what we are witnessing is a chronic decline in the effectiveness of the family justice system following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which extinguished the availability of legal aid for most family law litigants who previously qualified.”

It has been noted that the UK Government were “clever” in framing LASPO cuts, drawing on “populist perceptions of legal aid” and targeting “the reforms at already demonised groups in society”.⁸² Attention was placed upon the amount of money awarded to those working in the legal aid field, “exploiting the idea that ‘fat-cat lawyers’ who abuse the system for profit are going to be the most effected, so we should have minimal sympathy for them and in turn support the cuts”.⁸³

In representing our members engaged in civil legal aid work, the Bar of Northern Ireland will work against any perpetuation of, “the populist perception of legal aid”. We advocate for an informed review of civil legal aid provision within our jurisdiction – one with clear objectives and parameters, which is evidence based, learning from other jurisdictions and which uses all available data.

The overarching message of the Bar of Northern Ireland is unambiguous – the NI Executive and Department of Justice must invest to save in our justice system and prioritise the following three areas to ensure long-term sustainability of civil legal aid:

91 CHICHESTER STREET
BELFAST, BT1 3JQ
NORTHERN IRELAND

Email
sinead.mcivor@barofni.org

Direct Line
+44(0) 28 9056 2132

Website:
www.barofni.com

⁸⁰ [Bar Council response on the review of civil legal aid](#)

⁸¹ [Sam Townend KC inaugural speech 9 January 2024 - CHECK AGAINST DELIVERY \(barcouncil.org.uk\)](#)

⁸² Flynn (n 1)

⁸³ Ibid.

Bar of Northern Ireland Response to the Review of Civil Legal Aid

July 2024

- Legal professionals should receive fair and timely remuneration and the Department must comply with their legal obligations to review rates.
- The scope of practice areas that are eligible for legal aid should be as wide as possible to ensure access to justice.
- The means test must be reviewed in consideration of the impact of inflation.

An increase in fees for legal practitioners is long overdue. The combined effect of unprecedented levels of inflation and the acknowledged failure of the Department to conduct mandatory statutory reviews in respect of remuneration, together with the new significant demands placed upon practitioners by the increase in the work required, has resulted in the level of fees being significantly below that is required for the sustainability of the system.

The practice financial health of many of our members does not lend itself to tolerance of procrastination and inaction of the part of the Department when it comes to remuneration. The Department's decision to present a Review of Civil Legal Aid questionnaire which offered up payment delay as a normal, acceptable budget management practice is viewed by the profession as derisory.

Barristers, working alongside our solicitor colleagues, are best placed to offer access to justice. Barristers are regulated, specialist legal experts. They offer a sustainable ability to deliver civil legal aid in a manner which assists citizens in navigating the challenges of life, problem solving and delivering value for money.

Investing in legal aid enables cost savings across government. Short sighted and swingeing restrictions to a demand led service not only fails to represent value for money in any sense but does nothing to promote social cohesion and the well-being of our citizens. The Bar of Northern Ireland will continue in our efforts to promote a positive, proud, and strategic vision for our legal aid system.