



**Public Accounts Committee**  
**Inquiry into the value for money from legal aid**  
**Bar Council written evidence**

## About Us

The Bar Council represents approximately 17,500 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

## Scope of Response

This submission addresses the subject areas the Committee has sought evidence on - effectiveness of LASPO, sustainability of legal aid market, costs and benefits and access to justice.

## Effectiveness of LASPO

1. Through the reforms introduced by LASPO, the Ministry of Justice (MoJ) aimed to (1) discourage unnecessary and adversarial litigation at public expense; (2) target legal aid to those who need it most; (3) make significant savings to the cost of the scheme; and (4) deliver better overall value for money for the taxpayer.
2. The Bar Council recognises that LASPO has made significant savings to the financial cost of the legal aid schemes; see, for instance, the National Audit Office's Report *Government's management of legal aid* (7<sup>th</sup> February 2024).
3. However, over the last decade, the Bar Council has repeatedly warned the MoJ about the damaging effect of LASPO on access to justice and the sustainability of the publicly funded civil and family bar: "LASPO: One Year On" (September 2014)<sup>1</sup>, "LASPO: Five Years On" (October 2018)<sup>2</sup>, "Running on Empty" (January 2021)<sup>3</sup>, "Access denied" (November 2022)<sup>4</sup>, and *Review of Civil Legal Aid – Call for Evidence, The Bar Council's Response* (February 2024).<sup>5</sup>
4. In those publications, we reported that LASPO has

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<sup>1</sup> Bar Council (September 2014) 'The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One year on Final Report' [https://www.familylaw.co.uk/docs/pdf-files/LASPO\\_One\\_Year\\_On\\_-\\_Final\\_Report\\_September\\_2014.pdf](https://www.familylaw.co.uk/docs/pdf-files/LASPO_One_Year_On_-_Final_Report_September_2014.pdf)

<sup>2</sup> Bar Council (October 2018) 'LASPO Five Years On: Bar Council submission to the Ministry of Justice LASPO Post-Implementation Review' - [laspopirsubmissionbarcouncilfinal.pdf](https://www.barcouncil.org.uk/media/1000/laspo-five-years-on-bar-council-submission-to-the-ministry-of-justice-laspo-post-implementation-review.pdf).

<sup>3</sup> Bar Council (January 2021) 'Running on Empty – Civil Legal Aid Research Report' [Running-on-Empty-Civil-Legal-AidFull-Report.pdf \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/media/1000/running-on-empty-civil-legal-aid-full-report.pdf)

<sup>4</sup> Bar Council (November 2022) 'Access Denied: The state of the justice system in England and Wales' [Access Denied: The state of the justice system in England and Wales in 2022 \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/media/1000/access-denied-the-state-of-the-justice-system-in-england-and-wales-in-2022.pdf)

<sup>5</sup> Bar Council (February 2024) [Bar-Council-response-on-the-review-of-civil-legal-aid.pdf \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/media/1000/bar-council-response-on-the-review-of-civil-legal-aid.pdf)

- catastrophically damaged access to justice by removing the ability of many who need advice and representation in civil or family disputes, to receive it;
- increased costs for other areas of government expenditure (e.g. as a problem about welfare benefits becomes one involving housing, mental health, family)
- overwhelmed areas of the justice system with litigants in person, particularly the family courts;
- imperilled the sustainability of the publicly funded legal profession.

### Sustainability of legal aid market

5. From the Bar's perspective, sustainability of the criminal, civil and family legal aid system requires fee levels and administrative schemes that

- remunerate barristers fairly for the work they undertake at all stages of seniority;
- remunerate barristers sufficiently by comparison to private work in the same practise area or other areas of practice into which they could reasonably undertake;
- allow publicly funded barristers who, although self-employed, function as quasi-public servants, to work in tolerable conditions;
- ensure good working lives for members of the profession.

6. The experience of barristers in all areas of publicly funded work indicates that the current arrangements fall well short of meeting those criteria. There are two main concerns: inadequate levels of fees, and unhelpful, time-consuming and unnecessary administration.

7. The MoJ has not increased fee levels for civil and family legally aided work since 1996, and reduced fees for some cases by 10% between October 2011 and February 2012. In real terms, fees are now approximately 50% of what they were in 1996.<sup>6</sup> The erosion of the value of fees has accelerated over the last decade - by reference to the CPI the decline over the last 10 years has been around 30%.

8. The recent modest increase in criminal fees as a result of the Bellamy recommendations has fallen far short of what is required to reverse the multiple rounds of significant cuts to fee levels since 1996. This is further reinforced by the recent Policy Exchange report that calls for an additional 10% to the current 15% increase in criminal fees.<sup>7</sup>

9. Barristers experience significant delays in payment, both generally, and because of the unavailability of, or inflexibility in the timing of, payments on account.

10. These issues are a clear disincentive for junior members of the Bar to begin undertaking civil legal aid work, and for more experienced members to continue to do so.

11. There are particular (evidence-based) concerns over recruitment and/or retention of barristers in the areas of criminal, family, immigration, and housing law.

12. The publicly funded Bar is deeply committed to the social principles of justice for all but is weary that its commitment and goodwill are continually taken for granted in a legal aid scheme anxious to save every possible penny of funding at the expense of short term effectiveness and long-term sustainability.

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<sup>6</sup> National Audit Office's report "*Government's management of legal aid*" (09 February 2024), page 48, paragraph 3.

<sup>7</sup> Policy Exchange, [The 'Wicked and the Redeemable'](#), 4 November 2023

13. In short, the Bar Council does not consider that the civil legal aid system is sustainable in its current form: see its response to the *Review of Civil Legal Aid – Call for Evidence* (February 2024).

### Costs and benefits

14. The Bar Council agrees with the conclusions in the National Audit Office's report *Government's management of legal aid* (February 2024) that the full costs and benefits of LASPO are unknown.

15. Evidence demonstrates there is a statistical link between early legal advice and the speed with which legal problems are solved: *Analysis of the Potential Effects of Early Legal Advice/Intervention*, Ipsos MORI (November 2017).<sup>8</sup>

16. The Law Society has confirmed that over the last decade the number of legal aid firms has nearly halved, while the number of people struggling to represent themselves in the family courts has trebled and court backlogs are increasing. Coupled with the decline in law centres, advice deserts mean that individuals are then forced to seek free advice, or represent themselves as litigants in person, or let their legal needs go unmet - which is not always possible and can result in those needs becoming more complex.

17. This experience chimes with research by the World Bank which concluded that not providing legal aid can cause additional cost in other areas of government spending such as healthcare, housing, child protection, and imprisonment.<sup>9</sup>

### Access to justice

18. The next government should widen the scope of legal aid eligibility through a targeted re-introduction across civil and family. Legal aid fees for civil, family and crime should be urgently increased and mechanisms put in place to address the continual problem of erosion from inflation.

## The Bar Council March 2024

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<sup>8</sup> [keith blakemore and anna sperati paper ucl conference.pdf](#)

<sup>9</sup> [A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf \(worldbank.org\)](#)