



## Consultation response

# Ministry of Justice Review of Civil Legal Aid – Call for evidence

21 February 2024

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The Costs Lawyer Standards Board ('CLSB') is the regulator of Costs Lawyers in England and Wales. We exist to serve the public interest by setting and maintaining the standards of professional conduct by which Costs Lawyers must abide. Our mission is to "provide effective, proportionate regulation of Costs Lawyers in a way that promotes consumer choice and understanding, and engenders justified public trust."

All of the CLSB's activities must be compatible with, and promote, the regulatory objectives set out in the Legal Services Act 2007, which are as follows:

1. protecting and promoting the public interest;
2. supporting the constitutional principle of the rule of law;
3. improving access to justice;
4. protecting and promoting the interests of consumers;
5. promoting competition in the provision of legal services;
6. encouraging an independent, strong, diverse and effective legal profession;
7. increasing public understanding of the citizen's legal rights and duties;
8. promoting and maintaining adherence to the professional principles

The CLSB is pleased to respond to the Ministry of Justice's ('MoJ') call for evidence relating to its review of civil legal aid. We have focussed our response on questions 4, 7, 8, 15 and 16.

**4. What potential risks and opportunities do you foresee in the future for civil legal aid: i) in general; and ii) if no changes are made to the current system? Please provide any specific evidence or data you have that supports your response.**

The CLSB notes that one of the aims of MoJ's Review is to ensure that the civil legal aid system is "*Sustainable: a system that is able to attract and retain providers of sufficient number, quality and*

*experience to provide effective legal advice, assistance and representation to all those eligible, ensuring provision to meet demand over the long term.”*

Since 2012, there have been two distinct trends in the profile of regulated Costs Lawyers undertaking legal aid work. Between 2012 and 2020, the proportion of the regulated Costs Lawyer profession undertaking exclusively legal aid work doubled from 2.5% to 5%. In the same period, the proportion of Costs Lawyers who do not undertake any legal aid work at all almost doubled, from 38.8% to 70.2%. Our [latest data](#) on the profession shows that between 2020 and 2023, the proportion of Costs Lawyers who do not undertake any legal aid work has stayed relatively stable, at around 70%. This suggests that legal aid work is becoming increasingly specialised in the regulated costs profession, carried out by a small number of expert practitioners.

Many regulated Costs Lawyers work within firms of solicitors. However, there has been a substantial reduction in the number of solicitors' firms carrying out legal aid work. [Analysis](#) from the Law Society shows that many law firms have closed their legal aid departments since 2013, and the number of advice agencies and law centres carrying out legal aid work has [dropped by 59% since 2012](#). The Law Society analysis suggests that the number of legal aid providers could decrease further by 2025. Further, in its February 2024 [report](#), the National Audit Office ('NAO') stated that respondents to its consultation expressed plans to reduce or withdraw legal aid services in future.

A reduction in the overall number of regulated Costs Lawyers undertaking legal aid work will impact the following, all of which have been identified as aspects of interest to MoJ's review:

- the ability for users to access appropriate advice in a timely way (including on complex and cross-cutting issues);
- the accessibility of legal aid across England and Wales;
- the user experience and 'pinch points' in the system; and
- the diversity of legal aid providers.

A continued reduction in the number of Costs Lawyers undertaking legal aid work also means fewer opportunities to develop the next generation of legal aid lawyers – including Costs Lawyers specialising in legal aid. In an MoJ-commissioned [survey](#), 61% of respondents were dissatisfied with the ability to build a quality workforce in the civil legal aid sector. In the same survey, 60% of participants reported that difficulties in attracting junior lawyers into civil legal aid was likely to prevent their continued service provision. Participants also expressed concerns about established lawyers reaching retirement age and being unable to pass on their knowledge to the next generation of civil legal aid lawyers. As well as having a detrimental impact on access to justice for consumers already, unless these challenges are addressed, they will be exacerbated in future i.e. fewer experienced legal aid lawyers will mean fewer users are able to access advice in a timely way, reducing the overall sustainability of the system.

**7. Is there anything in particular in civil legal aid that prevents practitioners with protected characteristics from starting and continuing their careers? If yes, how could this be addressed? Please provide any specific evidence or data you have that supports your response.**

Encouraging an independent, strong, diverse and effective legal profession is one of the CLSB's regulatory objectives. This includes understanding and addressing barriers that prevent diversity in the profession.

As set out in the summary of the National Audit Office's [report](#) on 'Government management of legal aid', published 9 February 2024, "*Civil fees have been frozen since 1996, then MoJ reduced them by 10% between October 2011 and February 2012. In real terms, civil legal aid fees are now approximately half what they were 28 years ago. MoJ has only recently begun to review civil legal aid fees as part of its wider review of the system and has not committed to proposing changes to specific fees following this.*" Data recently published in an MoJ-commissioned [survey](#) showed that the majority of private practices do not make a profit from legal aid and that 40% said they intend to actively leave the sector over the next five years.

The rising cost of living, state of the housing market and other economic concerns mean that practitioners joining the profession are more likely to want to work in areas that offer financial stability and adequate remuneration. Unless legal aid work is adequately remunerated, experienced professionals may leave civil legal aid work, and newly-qualified entrants will be discouraged from practising in legal aid. The nature of the legal aid fee structure is likely to have the greatest deterrent effect on practitioners who need more financial stability i.e. younger entrants, those from lower socio-economic backgrounds, and those with caring responsibilities. This will have a detrimental impact on the diversity of legal aid providers unless measures are taken to ensure that legal aid work is a financially viable and appealing area of work.

**8. How can the diversity of the profession be increased in legal aid practice, including ethnicity, disability, sex, age and socio-economic background? Please provide any specific evidence or data you have that supports your response.**

Please see our response to question 7.

**15. Remote legal advice, for example advice given over the telephone or video call, can be beneficial for delivering civil legal aid advice. Please provide any specific evidence and thoughts on how the system could make the most effective use of remote advice services and the implications for services of this.**

Please see our response to question 16.

## **16. What do you think are the barriers with regards to using technology, for both providers and users of civil legal aid?**

The CLSB agrees that using technology may be beneficial in delivering civil legal aid advice. In our [policy statement on good consumer outcomes](#), we identified innovation as one of seven key categories of consumer outcomes that are important to us. The outcomes we want to see are that consumers benefit from innovative ways to supply services, and that innovation drives up quality and accessibility. The LSB's [Technology and Innovation in Legal Services survey](#) shows increased use of 'technologies for access' across the sector, which suggests that regulated communities are already alive to the need for, and benefits of, more accessible legal services for consumers. As an approved regulator, our role is to ensure that legal professionals feel able to use technology and innovation to improve their offering to consumers, whilst ensuring that the risks are appropriately identified and mitigated.

However, it is important that increased use of technology and innovation does not inadvertently lead to the exclusion or detriment of consumers who are less confident at engaging with technology. [Research from the ONS](#) shows that, in 2020, 6.3% of UK adults had never used the internet and [Ofcom research](#) found that 1.5 million homes do not have internet access. Ofcom data shows that the groups least likely to have internet access are those aged 65 and over, lower income households and financially vulnerable adults. Technological and innovative legal solutions also need to take into account accessibility and compatibility for clients with disabilities who may use screen reading, speech recognition, reading solution or other accessibility-related software.

The CLSB would recommend that MoJ carry out a detailed and thorough investigation of the potential equality, diversity and inclusion ('EDI') impacts of greater use of technology in civil legal aid, for both users and providers. The CLSB would also like to see MoJ commit to ongoing monitoring of any EDI impact – positive or negative – of greater use of technology in this area on both providers and consumers.

Existing and emerging technological threats must also be considered. The move to remote and hybrid working has made many businesses, including law firms, more dependent than ever on IT systems. With increased dependence comes increasingly sophisticated threats that must be predicted and managed. Cyber scams (such as phishing attempts and email modification frauds), ransomware used to steal information and block system access, and attacks spreading between legal providers who work together (such as instructing solicitors, barristers and Costs Lawyers) have all been experienced recently in the legal sector, often with serious consequences. Concerns around cybersecurity may act as a deterrent to both providers and consumers, and the CLSB would therefore expect the MoJ to carry out careful consideration of potential cyber-threats posed by increased or different use of technology in legal aid cases, and how these will be mitigated.

## **Conclusion**

We hope the information provided above will be of assistance to the review, and look forward to reading MoJ's response to the call for evidence in due course.