



The Law
Society

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RESEARCH ON THE SUSTAINABILITY OF CIVIL LEGAL AID

FINAL REPORT

Commissioned by the Law Society

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Contents

1	Executive summary	4
2	Introduction	8
2.1	Context	8
2.2	Motivation for this study	9
2.3	Study objectives	10
3	Approach	11
3.1	Overarching framework	11
3.2	Methodology	12
3.3	Data processing and analysis	16
4	Findings: Housing legal aid	18
4.1	Housing legal aid is a loss-making activity for providers in our sample	18
4.2	The costs of providing Housing legal aid are significant	20
4.3	Current Housing legal aid fee rates are putting pressure on provider revenues	23
4.4	Wider issues faced by Housing legal aid providers	26
4.4.1	Challenges in recruitment and retention	26
4.4.2	The sustainability of Housing legal aid	28
5	Findings: Family legal aid	31
5.1	Profitability in Family legal aid is mixed	31
5.2	The costs of providing Family legal aid have increased over time	34
5.3	Sustained low fee rates are causing concerns in the Family market	39
5.4	Wider issues faced by Family legal aid providers	43
5.4.1	Availability of legal counsel and other experts	43
5.4.2	Challenges in recruitment and retention	44
5.4.3	The sustainability of Family legal aid	47
6	Conclusions	50
6.1	Summary of findings	50

6.2	Recommendations for future analysis	50
7	Annex A: Data collection	53
7.1	Financial data	53
	7.1.1 Housing	53
	7.1.2 Family	54
7.2	Qualitative data	55
8	Annex B: Apportionment of costs for Housing legal aid	56
8.1	Worked example	56

1 Executive summary

Background and approach

Frontier Economics was commissioned by The Law Society to conduct research assessing the sustainability of civil legal aid in England & Wales. Our research complements the MoJ Review of Civil Legal Aid (RoCLA) by focussing specifically on the issue of legal aid fees.

The primary aim of the work is to collect and assess data on the costs of applying for and maintaining a civil legal aid contract, and the associated profits (or losses) from this work. Understanding the costs and revenues of centrally funded provision is fundamentally important for government as it enables it to set funding rates at appropriate levels and at regular intervals, ensuring the sustainability of service provision. Regular reviews of provider costs to inform fee setting are carried out routinely in other sectors.

Due to the compressed timetable for this work, it was not feasible to cover the entirety of the civil legal aid sector and so choices were made about which area of law to focus on and how to approach the data collection.

The focus for our work is Housing and Family legal aid work. The former was selected since it represents a sizeable amount of legal aid spend with a significant element of provision from not-for-profit (NFP) organisations, and it reflects current priorities for the MoJ and LAA. The latter was selected because it is the largest area of civil legal aid spend and is by contrast largely provided by private firms.

Given that this is the first time that an exercise of this nature has been carried out, we chose to conduct in-depth data collection interviews with individual providers to allow for a nuanced understanding of providers' finances, decision-making, and data gathering capabilities. This approach ensures that the information collected from providers is reliable, detailed and of high quality. It also, by its very nature, means that the number of providers we have been able to reach in the short timeframe of this project is smaller than what could be achieved using alternative methods such as surveys.

Detailed financial data was gathered from 45 providers in total across the two areas of civil legal aid. While we cannot claim that our sample is representative of the wider civil legal aid sector, we believe that our approach is right for gathering robust financial data from providers, and for building a full understanding of the provision of civil legal aid and the multitude of issues impacting profitability. This is important because our work was also intended to be a helpful learning exercise to illustrate the practicalities of this type of data collection, to test the feasibility of future, larger scale data collections of this nature and provide a framework for doing so.

Findings

The analysis to date indicates that civil legal aid work is loss-making for the majority of providers that we have engaged with. Of the 45 providers we received financial data from, 37 (82%) were found to make a loss on their civil legal aid work. Those providers that we

interviewed but did not submit financial returns also indicated that legal aid work was a loss-making activity for their organisation.

The extent of loss-making from civil legal aid work was found to vary by provider type and area of specialism:

- All Housing legal aid providers in the sample were loss-making from their civil legal aid work, including all private Housing providers offering Housing legal aid, compared with 47% of providers working in Family;
- All NFP providers (primarily operating in the Housing legal aid market) were loss-making from civil legal aid compared with 64% of private providers when considering both Housing and Family legal aid providers, or 100% of private providers when considering Housing legal aid providers only.

We find that the average fee-earner in our Housing sample is able to recover only 48% of the cost of delivering legal aid work, leaving a significant funding shortfall of around £40,000 per fee-earner. In Family, cost recovery is somewhat better with the average fee-earner in our sample recovering 94% of the cost of provision. The extent of loss-making across Housing and Family legal aid are shown in Figure 1 below. Losses are smaller in Family legal aid, where the median provider is breaking even and the top quartile of providers were found to turn a modest profit.

Figure 1 Profits (losses) from providing legal aid, per FTE fee-earner



Source: Frontier Economics, based on analysis of Housing and Family provider returns

Note: Annual figures for the last full financial year available, which was 2022-23 for most providers

We find that the relative profitability of Family legal aid is largely driven by differences between private law Family and public law Family work. The median provider is generating a moderate loss from the provision of private law Family legal aid, while the median provider is generating a moderate profit from the provision of public law Family legal aid.

Interviews with providers reveal that the lack of profitability is largely driven by:

- relatively low legal aid revenues generated by providers, as a result of a combination of low fee rates which have not increased for decades, as well as relatively low levels of recoverable time which can be billed; and
- a high and increasing cost burden associated with the administration and delivery of legal aid work, which is often only partially remunerated, and often with significant delay after the costs are incurred.

In general, legal aid providers remaining in the market typically rely on a variety of cross-subsidisation models in order to sustain the provision of this work. Cross-subsidisation may come in the form of other grant funding, inter-partes cost recovery on legal aid work (particularly in the case of Housing legal aid) or privately paid work.

Nevertheless, economic principles suggest that any loss-making activity would ultimately result in provider exit from the relevant market. We observe that there are a number of organisations which continue to provide legal aid services despite the fact that they are loss-making, typically based on social conscience and a sense of moral responsibility.

This lack of profitability is contributing to wider issues in civil legal aid such as:

- Difficulties with recruitment and retention, especially at senior levels of the profession. This is leading to an ageing group of experienced supervisors, as well as a thin pipeline of talent willing to pursue a career in the area.
- Sustained market exit over the years. The number of civil legal aid providers in England & Wales has reduced by 19%¹ in the last five years. This has significant implications for access to justice and the future provision of civil legal aid.

Implications for policy

Our findings demonstrate a substantial funding gap across both Housing and Family legal aid work. The sample of responses we have gathered indicates that on average, fee-earning staff are only able to recover between 48% and 94% of the full costs of providing legal aid, let alone generate a profit margin.

The funding gap can only be closed if significant changes are introduced. For example, a Housing legal aid provider currently recovering half of their costs would only be able to break even if either their effective hourly fees were to double, if their recoverable billed hours were to double², or if both were to increase in tandem by a smaller amount.

It is important to note that the information and analysis presented in this report is based on a sample of 45 civil legal aid providers across Housing and Family. While the data we have

¹ Analysis based on [Legal aid statistics](#), October – December 2023, Ministry of Justice / Legal Aid Agency

² This might be achieved by either increasing the scope of what constitutes billable time, or by reducing the administrative steps required for the provision of legal aid services such that billable time is maximised.

collected is very detailed and of high quality, it covers only a fraction of the sector (13-14% for Housing, 1-2% for Family). Similar, large scale data collection exercises in the future would be beneficial for confirming our results and developing a deeper understanding of the variation in performance across different areas of civil legal aid as well as within segments of the same areas of civil legal aid. Our work has demonstrated that it is possible to gather the required financial data from providers even though this has required significant effort and time. We expect that future data collections will be less burdensome and can be scaled with appropriate guidance, embedding the lessons learnt through this initial research.

2 Introduction

2.1 Context

The civil legal aid sector has reduced in size considerably over the past decade. LAA data³ shows 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. This large drop in provision is a consequence of several factors including legal aid reforms, notably the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) which significantly reduced the range of civil legal problems within scope of legal aid and tightened the eligibility criteria for receiving legal aid support. Another relevant factor is the level of legal aid fees and eligibility thresholds which have not increased since 1996⁴.

Consequently, the provision of legal aid has dropped substantially, which has led to the emergence of legal aid ‘deserts’ – referring to the complete absence of legal aid providers in certain areas. Research by The Law Society⁵ shows that access to legal advice on education, welfare, housing, community care and immigration is very limited in large parts of the country. If current trends continue, there is a significant risk that access to justice for those in vulnerable positions will further worsen.

In this context, it is crucially important to analyse market dynamics in order to understand how the sector is likely to evolve going forward, and what reforms may be necessary to ensure the sustainability of civil legal aid.

The Ministry of Justice (MoJ) launched a review of civil legal aid (RoCLA) in January 2023 which aims to examine the civil legal aid system in its entirety, and identify options to improve the sustainability of the system such that it is capable of delivering access to justice over the long term. As part of this work, four analytical workstreams have been established.

- Economic analysis of the structure of the civil legal aid market, to assess how the market is currently functioning and identify the root causes of its problems. Part of this work has been informed by a survey of civil legal aid providers, conducted by PA Consulting⁶.
- A comparative analysis of civil legal aid systems in other countries (to include Australia, Canada, Finland, the Netherlands, Scotland and the USA).
- A series of data publications, to summarise key descriptive information about the provision of civil legal aid services, and how these have changed over time. This will use data from the Law Society and Bar Council to inform deep dives into key challenges and areas of interest.

³ [Legal Aid Provider Dashboards](#), Ministry of Justice / Legal Aid Agency, last accessed April 2024

⁴ [Civil legal aid review](#), The Law Society, February 2024

⁵ [Civil legal aid review](#), The Law Society, February 2024

⁶ [Review of Civil Legal Aid: Provider Survey Report](#), PA Consulting, January 2024

- Social research of user journeys, which will aim to conduct qualitative research with those who have previously accessed civil legal aid services, those who support civil legal aid users, and civil legal aid practitioners, to identify issues from a user perspective.

2.2 Motivation for this study

Our research provides an assessment of fees in relation to the financial sustainability of legal aid work based on the actual revenues and costs of providers. This was not a focus of the MoJ RoCLA and is therefore a complement to this work.

Our overarching aim is to understand to what extent the current remuneration scheme for civil legal aid providers allows them to recover their costs, and to consider ways in which fees could be set going forward based on sound economic principles. To the best of our knowledge, no such analysis has been carried out in recent years.

The legal aid fee structure is complex and varies according to area of law, nature of the service provided and geographical location⁷. Typically, the rates include a fixed fee element which applies if the services provided fall within certain thresholds of hours worked. If these thresholds are exceeded, an hourly fee rate applies. Enhancements are also available for elements of complex work on certificated cases.

The headline hourly fee rate is within the range of £50 – £60, though this may also vary depending on the nature of the work carried out. Civil legal aid fees have not increased since the 1990s and in fact were reduced in 2011 by 10%. If one accounted for inflation, this means that fees have experienced an additional reduction of more than 40% since 2011 or 90% since 1996 in real terms⁸.

Figure 2 Civil legal aid (2013) hourly rates compared with Guideline Hourly Rates for Solicitors and Legal Executives (2024)



Source: Frontier Economics, based on analysis of Civil Legal Aid (Remuneration) Regulations 2013 and Guideline Hourly Rates published by Courts and Tribunals Judiciary

Note: - Ranges for civil legal aid exclude hourly rates associated with 'Travel and Waiting'.
- Only National rates are shown for illustrative purposes. Legal aid and Civil Justice fees for London will be marginally higher.

⁷ All rates available at [The Civil Legal Aid \(Remuneration\) Regulations 2013](https://www.legislation.gov.uk), legislation.gov.uk, last accessed April 2024

⁸ [CPI index](https://www.statistics.gov.uk), Office for National Statistics, last accessed April 2024

In the 1990s there was less difference between the hourly fees paid to providers for equivalent work when funded privately or by legal aid. In the last two decades there has been a major divergence between the two such that average rates for privately paid work are in the region of 3 – 4 times the rates paid for legal aid. A similar gap is seen when comparing legal aid fee rates with the Courts and Tribunals Judiciary guideline hourly rates for solicitors (see Figure 2).

In the context of ample sector voices calling for reform, this assessment hopes to provide timely insight into the current state of the legal aid sector, and an economic framework to inform future fee setting processes for civil legal aid in order to ensure improvements and the long-term sustainability of service provision.

2.3 Study objectives

The main objectives of the study are to:

1. collect detailed financial data from civil legal aid providers to allow us to identify the costs of applying and maintaining a civil legal aid contract;
2. analyse this data to provide robust estimates of the profitability of civil legal aid work, highlighting any notable patterns; and
3. identify any changes that are required to ensure the long-term sustainability of the sector.

3 Approach

3.1 Overarching framework

The primary aim of our work is to identify the costs of applying for and maintaining a civil legal aid contract, and the associated profits (or losses) from this work. Within an economic framework, this information allows us to quantify the degree of any misalignment between the sustainable costs of providing civil legal aid, and the revenues that providers are realistically able to generate from this work.

Understanding the costs and revenues of centrally funded provision is fundamentally important as it enables the government to set fee rates at appropriate levels and at regular intervals, ensuring the sustainability of service provision.

In other sectors, government and independent regulators regularly review and amend fees or funding levels, seeking to strike a balance between incentivising service providers to sustainably deliver services of sufficient volume and adequate quality, while ensuring that they are remunerated fairly. In other words, they enable providers to achieve an adequate economic return without overcharging consumers – or in the case of legal aid, the taxpayer.

In practice, this generally involves establishing the costs of efficient provision and setting prices or funding rates at a level that allows providers to recover efficiently incurred costs and generate an appropriate margin to ensure future sustainability, taking into account inflationary pressures and feasible static and dynamic productivity improvements.

For example, in the healthcare sector, a national tariff⁹ is used to make payments to the acute sector in England. Activities are grouped into healthcare resource groups (HRGs) and prices are set for each at regular intervals for a specified period of time. Prices are based on the average cost of provision derived from very detailed cost data collected from all Hospital Trusts. Multiple adjustments to reflect location specific factors (e.g. higher costs of provision in London) or to incentivise quality are also applied to funding.

In many other sectors, regulators set revenues/prices such that regulated providers can achieve a reasonable return over a regulatory period (typically stretching between 3 – 6 years), provided they operate efficiently, ensuring their cost base is appropriate. Price controls in the utilities sectors, for example, use the formula:

$$P_1 = P_0 + CPI - X$$

where P_0 is the price in the starting year of the regulatory period and P_1 is the price in the following year, CPI is the annual inflation rate and X is an efficiency factor capturing static and dynamic efficiency improvements which are judged to be feasible.

⁹ This is now known as the NHS Payment Scheme. See <https://www.england.nhs.uk/pay-syst/national-tariff/>.

The benefit of having clear fee and funding setting principles alongside regular reviews is that this enhances certainty and predictability in these sectors, enabling providers to plan their provision over a longer time horizon, while also ensuring that the Government has clear visibility of any issues that might arise and the ability to intervene if necessary. The absence of such a framework in a regulated market by contrast implies greater uncertainty for providers in the market, which may deter entry, and a lack of visibility for the Government over any opportunities for investment and improvement, which risks limiting the long-term sustainability of the sector.

3.2 Methodology

Our approach to addressing the key research questions involved the following steps.

An initial scoping phase of work was carried out between October and November 2023 to hone our methodology and develop the data collection template to be shared with providers. This consisted of a workshop with Law Society colleagues, conversations with 10 – 15 legal aid providers and stakeholders, attendance of the 2023 LAPG conference, and a review of the secondary research and data available. This work helped us to develop and test our data collection tools, and to identify methods for recruiting providers to participate in the research.

A second phase focused on data collection was carried out between December 2023 and March 2024. Providers were approached through multiple channels (drawing on the contacts of membership bodies such as The Law Society, LAPG, Resolution etc.) and invited to participate in the research. Those that agreed to take part were asked to:

1. complete a data template with financial information about their organisation (revenues, costs, profitability); and
2. participate in a one-hour interview with Frontier Economics to discuss their inputs and ensure consistency, and for the collection of further qualitative inputs. Providers were also required to respond to follow up queries on an ad hoc basis to quality assure the data returns.

Interim findings based on the initial phase of data collection were developed and shared with MoJ during workshops for feedback.

The final phase of work involved careful processing and analysis of the information gathered during the second phase of work followed by the development of this report.

Due to the compressed timetable for this work, it was not feasible to cover the entirety of the civil legal aid sector, and so choices had to be made about which areas to focus on and how to approach the data collection.

Given that this is the first time that an exercise of this nature has been carried out, we opted to conduct in-depth interviews with individual providers to allow for a high quality and nuanced understanding of providers' decision-making, and data gathering capabilities.

While this is substantially more time-consuming than alternative methods (such as surveys, which offer the possibility of wider reach), we believe that it is the correct approach for gathering robust financial data from providers, and for building a full understanding of the provision of civil legal aid and the multitude of issues impacting profitability. The work was also intended to be a helpful learning exercise to illustrate the practicalities of this type of data collection, to test the feasibility of future, larger scale data collections of this nature and provide a framework for doing so.

Data collection

Our data collection was conducted in two phases, each focusing on a different area of civil legal aid. Our initial phase was focused on Housing legal aid, which was selected since it represents a sizeable amount of legal aid spend with a significant element of provision from not-for-profit (NFP) organisations, and reflects current priorities for the MoJ and LAA. The second phase of data collection focused on Family legal aid, which was selected because it is the largest area of civil legal aid spend, and (in contrast to Housing) is largely provided by private firms.

The data collection process and timings are described in Figure 3 below.

Figure 3 Data collection process and timelines

		December					January				February				March				
		27-Nov	04-Dec	11-Dec	18-Dec	25-Dec	01-Jan	08-Jan	15-Jan	22-Jan	29-Jan	05-Feb	12-Feb	19-Feb	26-Feb	04-Mar	11-Mar	18-Mar	25-Mar
Housing data collection	Develop recruitment strategy and materials																		
	Recruitment materials sent out																		
	Interviews arranged																		
	Interviews and follow ups conducted																		
	Interim findings workshop																		
Family data collection	Develop recruitment strategy and materials																		
	Recruitment materials sent out																		
	Interviews arranged																		
	Interviews and follow ups conducted																		

Source: Frontier Economics

Engagement with Housing legal aid providers took place between December 2023 – January 2024, and with Family legal aid providers between February 2023 – March 2023. This engagement was facilitated with thanks to Law Society and LAPG colleagues.

Participants were gathered from a range of sources, including contacts identified internally and from the Law Society and LAPG, advertising through mailing lists, press releases and website announcements by the Law Society. We also reached out to participants of the MoJ Legal Aid Provider Survey¹⁰ who had expressed an interest in engaging with further research.

¹⁰ [Review of Civil Legal Aid: Provider Survey Report](#), PA Consulting, January 2024

Despite the tight timetable, and depth of engagement required, we successfully engaged with more than 45 providers¹¹. The breakdown is summarised in Figure 4 below.

Figure 4 Sampling overview

	Total providers in market	Proportion of total providers in market	For a sample size of 40-50 provider, this implies...	Frontier analysis - interviews conducted	Frontier analysis - template returns
Total legal aid providers	1235	100%			
Of which:					
~ Housing	218	18%		28	30
~ Family	860	70%		22	17
Total Housing and/or Family	978	100%	40-50	50	47
Of which:					
~ Private	913	93%	37 - 47	31	24
~ Not-for-profit	65	7%	2 - 4	19	23
~ London only	253	26%	10 - 13	11	7
~ Non-London only	614	63%	25 - 31	37	39
~ Wales only	70	7%	3 - 4	2	1
~ Multiple locations (inc. London)	36	4%	1 - 2		
~ Multiple locations (exc. London)	5	1%	<1		

Source: Frontier Economics, based on analysis of Directory of Legal Aid providers, Legal Aid Agency, last accessed April 2024

Note: Some legal aid providers offer both Housing and Family legal aid services (as well as others), so some double counting of providers may exist. Two suppliers included in the sample were able to provide financial returns for both their housing and family operations. This will not have an impact on the analysis or findings as each return focused on a different part of their business.

We reached out to a total of 67 Housing legal aid providers. Of these, we interviewed 28, and secured financial returns from 30. This represents 13-14% of the current Housing legal aid market.¹²

We reached out to a total of 82 Family legal aid providers. Of these, we interviewed 22, and secured financial returns from 17. This represents 1-2% of the current Family legal aid market.¹³ Of the returns received, 2 were from providers that offered both Housing legal and Family legal aid. As a result, we received 47 financial returns in total, which yielded 30 observations for the analysis of Housing legal aid and 17 observations for the analysis of Family legal aid.

Although overall sample sizes were small, best efforts were made to ensure a sampling distribution that was reflective of the wider market where possible.

The returns represent a good mix of:

¹¹ Two suppliers included in the sample were able to provide financial returns for both their Housing and Family legal aid operations. Hence a total of 47 observations were obtained from 45 providers.

¹² Based on the [Directory of Legal Aid Providers](#), Legal Aid Agency, last accessed March 2024

¹³ Based on the [Directory of Legal Aid Providers](#), Legal Aid Agency, last accessed March 2024

- a) **Geography**¹⁴: 30% of Housing returns are from London providers with the rest from regional England and Wales. By contrast, London is represented in just 12% of our Family sample. The overall spread of providers in the market is more concentrated in London – 65% of all Housing providers and 26% of all Family providers operate in London.
- b) **Provider type**¹⁵: 23% of Housing returns are from private firms, with the rest from not-for-profit organisations. This compares to 72% of private Housing legal aid providers in the market. By contrast, the significant majority of Family returns we received are from private providers, reflecting the overall spread of providers in the market, where fewer than 1% of organisations are not-for-profit.
- c) **Provider size**¹⁶: Half of Housing providers sampled have legal aid teams with three or fewer fee-earning staff, but a quarter of returns are from providers with larger teams (greater than five fee-earners). On average, legal aid teams in the Family sample were slightly larger. Roughly two-thirds contained legal aid teams of ten or fewer fee-earning staff, while the remainder had legal aid teams of a much larger size.

We are extremely grateful to providers for their participation in this work and the time they have spent in providing the required data and responding to our queries.

The information that was collected

Providers were sent a detailed financial data template to fill in with accompanying instructions on how the data should be broken down and presented, at least one week before interviews were held. Providers were able to contact the Frontier team if they were unclear on the requirements ahead of the interview.

At a high level, the data we sought to gather included:

- Descriptive information about the provider including type (e.g. private, not-for-profit), size, location, area of specialism, and length of time providing civil legal aid services;
- Annual revenues, broken down by practice area and further into specific segments of civil legal aid;
- Annual costs, broken down by resource costs (fee-earners vs. other staff) and overheads (split into a number of categories), and further by practice area and specialism within civil legal aid where relevant (e.g. private and public Family law services);
- Number of staff split by grade and area of work.

¹⁴ Based on the [Directory of Legal Aid Providers](#), Legal Aid Agency, last accessed March 2024

¹⁵ Based on the [Directory of Legal Aid Providers](#), Legal Aid Agency, last accessed March 2024

¹⁶ In this case, there is no base data available for comparison. Variation in our sample is taken as given.

We also asked providers for data relating to recruitment and retention (i.e. information about joiners and leavers), as well as indicators around unmet demand (i.e. number of requests turned away, and for which reasons) and non-billable work. In practice however, these data fields were not completed by the majority of providers, due to the data not being readily available or collected.

During the interview, provider responses to the template were discussed in order to resolve any queries and ensure consistency of approach to responses across providers. This was followed by an in-depth qualitative discussion to explore the provider's experiences in delivering legal aid in greater detail and explore key themes such as administrative process, capacity constraints and unmet demand, recruitment and retention.

Further information relating to data collection, including the financial templates sent to providers is available in Annex A: Data collection.

3.3 Data processing and analysis

Financial returns were first checked for internal inconsistencies and missing data points. Examples of data issues that were encountered during this phase of work included incomplete returns (i.e. fields of data not filled in), inconsistent recording (e.g. different units being used within the same template – for example, headcount vs. full-time equivalents), incorrect allocation of totals (e.g. total revenues provided not aligning with the sum of revenues broken down by practice area). Any issues that were uncovered during this initial process were raised with providers and resolved via additional phone calls and/or email correspondence.

Several decisions worth noting were taken during the data processing phase of work.

- First, granular cost allocation across services was applied on the basis of fee-earning staff allocations (in FTE terms) across these categories for the majority of providers. That is, if half the number of fee-earning staff work in a specific area of civil legal aid, half of the fee-earning staff costs were allocated to that area of civil legal aid. This principle was applied to support staff costs and other overheads, unless a clear reason was provided to deviate from that rule (i.e. where a cost item is specific to a particular area of the organisation – for example, if billing costs were considerably higher for legal aid work compared to private work).
- Second, as the focus of our study is on work remunerated at the centrally determined legal aid rates, inter-partes revenues and associated costs were excluded from our analysis. Further detail is set out in Annex B: Apportionment of costs for Housing legal aid.

Quality assured templates were aggregated for analysis for each category of law assessed. If any outlying observations were uncovered during this phase of work, further data checks were conducted to ascertain if unusual values were due to recording errors or legitimate variation in provider characteristics. The final analytical data set consisted only of those returns which had successfully passed through the quality assurance process.

The qualitative notes collected from interviews were aggregated and grouped thematically to identify key insights across providers. These insights were used to validate and add context to the quantitative findings.

The analytical approach consisted of four broad steps:

1. Identifying key metrics to inform the research questions (e.g. revenues per FTE fee-earner, costs per FTE fee-earner);
2. Calculating the key statistics informing the distribution of these metrics (i.e. averages, medians, 25th and 75th percentiles);
3. Comparing as far as possible the key statistics across different segments of civil legal aid work in scope as well as by location and provider characteristics;
4. Combining the quantitative information with the qualitative insights obtained in the interviews, and triangulating across information sources to develop our conclusions.

4 Findings: Housing legal aid

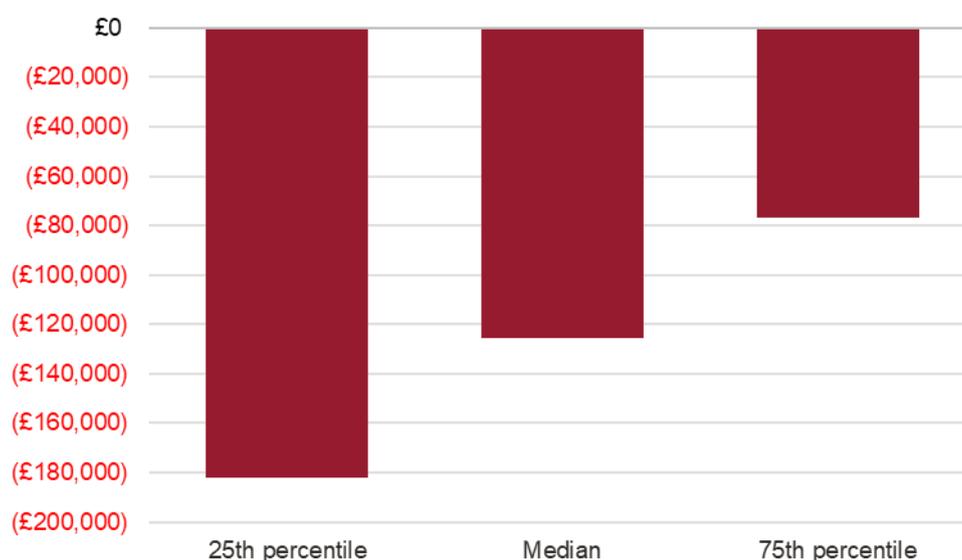
4.1 Housing legal aid is a loss-making activity for providers in our sample

Housing legal aid is found to be loss-making for the majority of providers that we have engaged with. If one excludes cases which achieve inter-partes cost recovery (at market rates in successful cases), all providers are found to be loss-making.

The precise magnitude of the loss varies by provider and location, but the difference between revenues and costs is in general found to be large – for the typical provider in our sample, a fee-earner is only able to recover around half of the full costs of providing Housing legal aid from legal aid funding. In most cases, fee-earners were not even able to recover the cost of their own salaries, with 77% of all providers in the sample unable to recover the direct costs of housing legal aid fee-earners' salaries through Housing legal aid revenues.

The median provider in the sample reported a total loss of £126,000 per year from providing Housing legal aid, while providers in the bottom 25th percentile of profitability reported losses of more than £181,000 per year. This translates to a loss of £33,000 per full-time equivalent (FTE) fee-earner providing Housing legal aid for the median firm in the sample. Even providers in the top 25th percentile of profitability reported significant losses, incurring losses of more than £28,000 per FTE fee-earner per year. This is illustrated in Figure 5 and Figure 6 below.

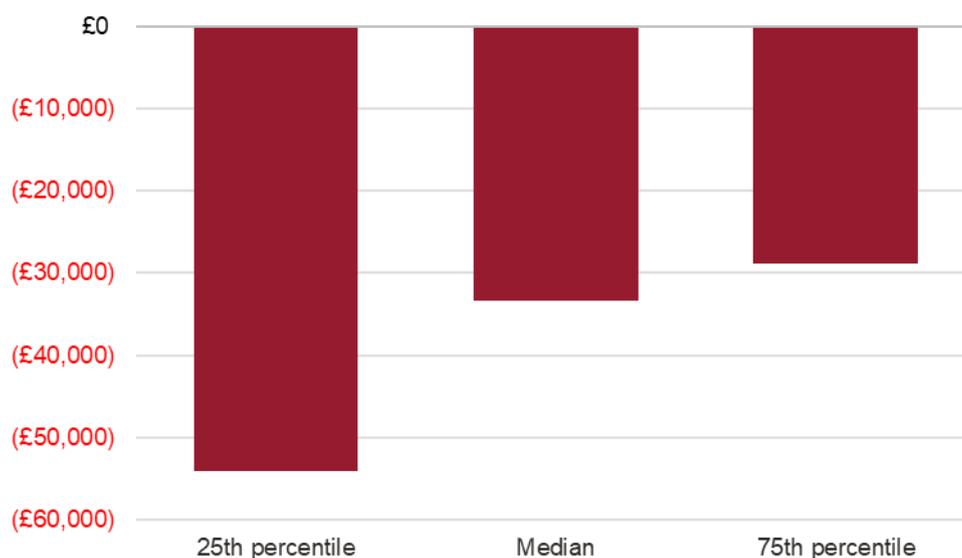
Figure 5 Total profits (losses) from providing Housing legal aid, per provider



Source: Frontier Economics, based on analysis of Housing provider returns

Note: In line with accounting conventions, figures in brackets indicate losses.

Figure 6 Profits (losses) from providing Housing legal aid, per FTE fee-earner



Source: Frontier Economics, based on analysis of Housing provider returns

Note: In line with accounting conventions, figures in brackets indicate losses.

Based on economic principle, we would expect losses of this nature to be unsupported on commercial grounds, and eventually result in provider exit. However, we find that those continuing to provide Housing legal aid typically do so based on social conscience and a sense of moral responsibility. Not-for-profit organisations in particular noted that they felt obliged to do this work as part of their charitable objectives, with some providers noting that this work was complementary to other support that they provided to individuals in need.

“Homelessness work and possession work are not that profitable relative to things such as disrepair claims, but these are a hugely important set of cases that need to be dealt with by somebody.”

“Having a legal aid contract is the right thing to do, but more and more Law Centres are questioning whether it’s worth having these contracts.”

Source: Housing legal aid provider interviews, Frontier Economics

Providers use different operating models to deal with this challenge, including:

- a) **Working longer hours** to increase legal aid revenues. All providers we interviewed reported doing this to some extent, but legal aid only firms were particularly reliant on this model.
- b) **Selecting cases with higher expected returns.** Private firms in particular reported pressures to do this more than Law Centres and not-for-profit organisations.
- c) **Cross-subsidisation from other sources of funding.** The majority of organisations in the sample with alternative funding streams reported that they relied on these sources to varying extents in order to support their Housing legal aid business.

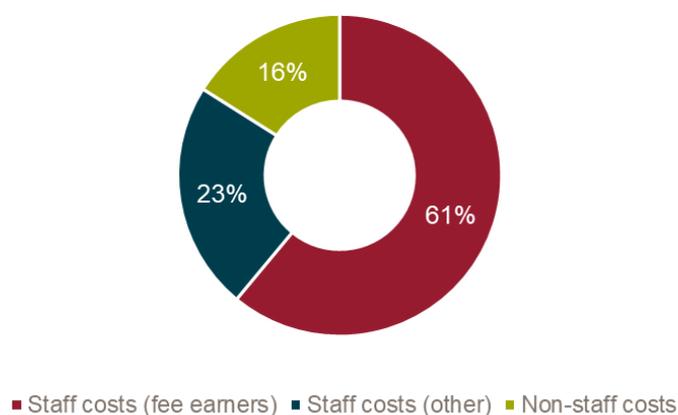
- d) **Reliance on recovering costs at inter-partes rates.** Inter-partes rates are a particular feature of Housing legal aid where a positive outcome may result in legal costs paid by the opponent at commercial rates. Inter-partes cost recovery comprised a significant means of cross-subsidisation for around a quarter of providers in our sample.

4.2 The costs of providing Housing legal aid are significant

The providers interviewed for this research indicated that the legal aid income which they currently receive is not sufficient to cover the costs of this legal aid provision, and must therefore be supplemented by alternative income sources. This is consistent with the quantitative evidence set out in Section 4.1 above.

The majority of the costs of legal aid provision may be attributed to salary costs, with 61% of total costs for fee-earning staff and 23% for other staff on average, and the remainder attributed to non-staff costs, in the form of overheads such as rent. This is set out in Figure 7 below.

Figure 7 Average cost composition of a Housing legal aid provider



Source: Frontier Economics, based on analysis of Housing provider returns

By comparison, the LMS Financial Benchmarking Survey¹⁷ indicates that the average firm in 2023/24 spent 51%¹⁸ of total costs on non-staff costs. As Figure 7 shows, this figure is significantly higher than average expenditures by Housing legal aid providers.

Indeed, many Housing legal aid providers we interviewed emphasised that current recorded costs were likely underestimates and do not necessarily indicate optimal levels of operation.

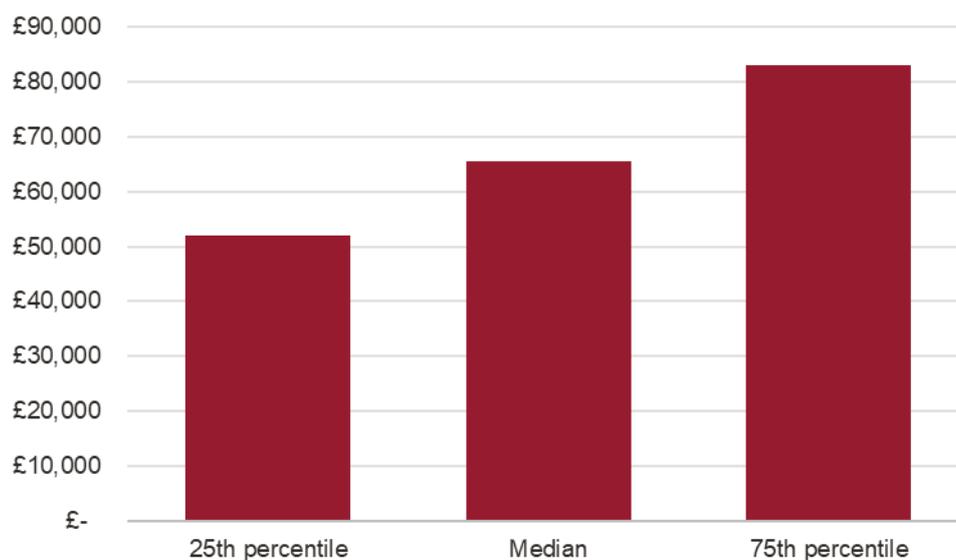
¹⁷ [LMS Financial Benchmarking Survey](#), Hazlewoods LLP / Lloyds Bank, March 2024

¹⁸ This figure includes super-profits earned by law firm Partners. Nevertheless, the proportion of non-staff cost spend remains significantly higher than average expenditures by Family legal aid providers even when excluding the super-profits category from total costs.

For instance, one explained that they operated within the grounds of a hospital and therefore premises costs were not included in their overheads calculation. A few others noted that they were working with fewer administrative staff than they would like due to issues with affordability or recruitment.

The median provider in the sample incurred a cost of £65,000 per FTE fee-earner to provide Housing legal aid, as illustrated in Figure 8 below.

Figure 8 Costs of providing Housing legal aid, per FTE fee-earner



Source: Frontier Economics, based on analysis of Housing provider returns

At approximate hourly Housing legal aid fee rates of £55 per hour¹⁹, a fee-earner would need to bill close to 1,200 hours per year in order to cover these costs. This implies a billable utilisation rate for every fee-earner of over 70% just to break even.

However, providers have reported that the considerable level of administration associated with legal aid is a significant driver of costs, and is likely to make this level of billable utilisation infeasible. They listed a number of tasks associated specifically with the provision of Housing legal aid which reduced their available time to complete billable work; for instance, the screening of clients in line with the legal aid eligibility requirements of scope, merits and financial eligibility, the evidence collection associated with this, dealing with clients that were typically more complex than privately paying clients, and managing legal aid contract requirements. According to providers, the time spent on these tasks directs time away from supporting legal aid clients, and represents a barrier for new entrants who may struggle to understand and undertake these requirements.

¹⁹ All rates available at [The Civil Legal Aid \(Remuneration\) Regulations 2013](https://legislation.gov.uk), legislation.gov.uk, last accessed April 2024

Furthermore, many of these tasks are not remunerated but must be completed in order to demonstrate compliance with standards and secure compensation. As a result, Housing legal aid providers noted that much fewer hours could be billed for Housing legal aid work as compared with private paying work, and this led to relatively low levels of cost recovery for the large amount of the work that legal aid providers are required to do.

“For private billing, I’ve got a computer system. I press a button, the private bill comes out, I can edit it. I can do this in probably less than five minutes and have a bill generated that quickly. For legal aid – not a chance.”

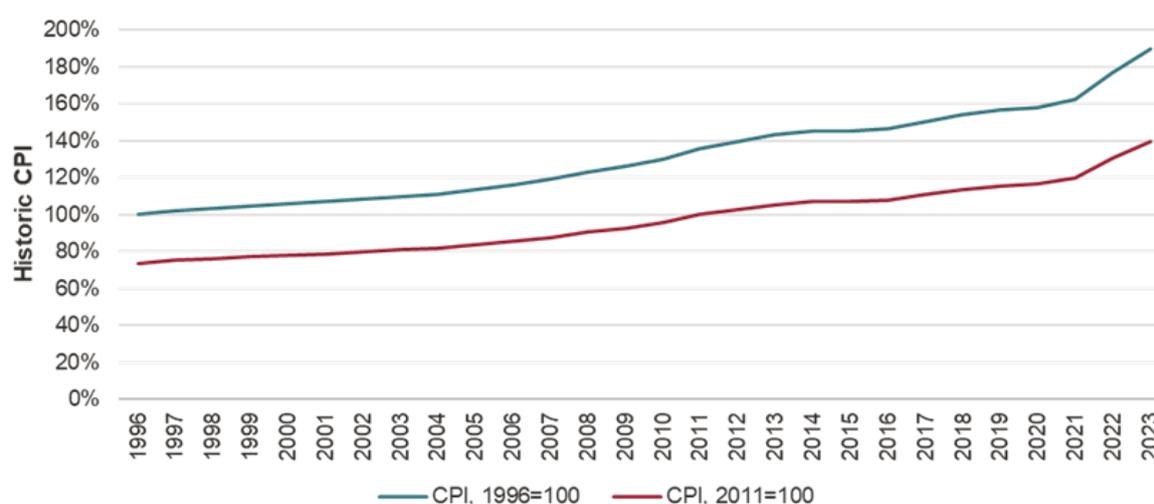
“The administrative load has grown massively over time. There is lots of contract management required under legal aid, much more than is required under local authority grant funding. It just doesn’t seem like an efficient way of running a funding stream.”

Source: Housing legal aid provider interviews, Frontier Economics

In addition, providers explained that the low fee rates for legal aid leave very little surplus with which to conduct the ordinary activities required in the running of a legal practice, including training, recruitment, and referrals.

This becomes even more challenging in the context of the rising costs and inflationary pressures of recent years. Analysis of inflation data²⁰ (illustrated in Figure 9) shows that general costs in the economy are effectively 40% higher today than they were in 2011, when legal aid fees were last cut by 10%, and over 90% higher today than they were in 1996, which was the last time there was a legal aid fee increase.

Figure 9 Inflation from 1996 to the present in the UK



Source: Frontier Economics, based on CPI index, Office for National Statistics, last accessed April 2024

Note: Published annual inflation rates till Q4 2023 were reindexed to 1996 and 2011 accordingly.

²⁰ [CPI index](#), Office for National Statistics, last accessed April 2024. Published annual inflation rates till Q4 2023 were reindexed to 1996 and 2011 accordingly.

Finally, uncertainties surrounding billing and cashflows were a particular issue noted by providers.

- **Uncertainty around the timing of payment:** This has direct consequences for business planning. Providers reported that it can take up to two years to recover their fees, with ongoing court backlogs contributing to these delays.
- **Uncertainty around the quantity of payment to be expected:** Providers reported that frequent challenge by the LAA can lead to reductions in the original amounts claimed for.

This issue was cited as a larger concern for smaller providers who do not have the capital to facilitate these large delays in billing. Providers also highlighted that this represents a key barrier to entry and expansion for potential and existing firms.

4.3 Current Housing legal aid fee rates are putting pressure on provider revenues

Legal aid fee rates have stagnated over the last few decades, leading to a widening gap with the private and third sectors. Where historically there was less difference between the hourly fees paid to providers for private or legal aid work, average rates for private work today are significantly higher than current civil legal aid rates.

Current Housing legal aid work is compensated at hourly rates of £46 - £72²¹ depending on the type of work and location (enhancements of these fees up to 100% are also possible for elements of complex work on certificated cases²²).

We find that if legal aid fee rates had increased in line with inflation since 2011, hourly rates for Housing legal aid work would range from £87 - £137, meaning that the maximum hourly rate today is notably less than the minimum hourly rate that would be in place had fee rates kept pace with inflation.

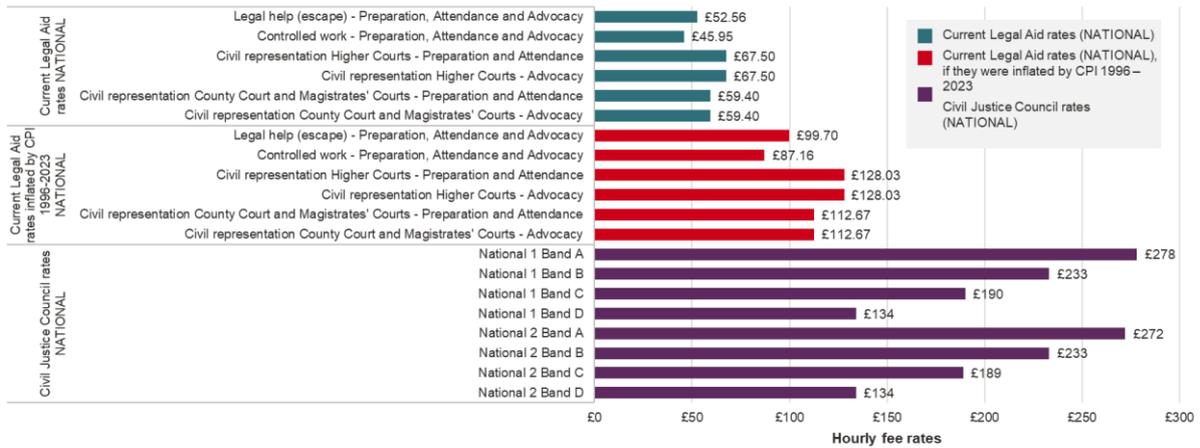
By contrast, guideline hourly rates published by Courts and Tribunals Judiciary from 1 January 2024²³ range from £134 - £546 based on solicitor experience and geographic location.

²¹ All rates available at [The Civil Legal Aid \(Remuneration\) Regulations 2013](https://legislation.gov.uk), legislation.gov.uk, last accessed April 2024

²² See Section 12 of [Costs Assessment Guidance: for use with the 2018 Standard Civil Contracts](#), Legal Aid Agency, December 2023

²³ [New Guideline Hourly Rates](#), Courts and Tribunals Judiciary, December 2023

Figure 10 Housing legal aid fee rates (2013) and Guideline Hourly Rates for Solicitors and Legal Executives (2024)



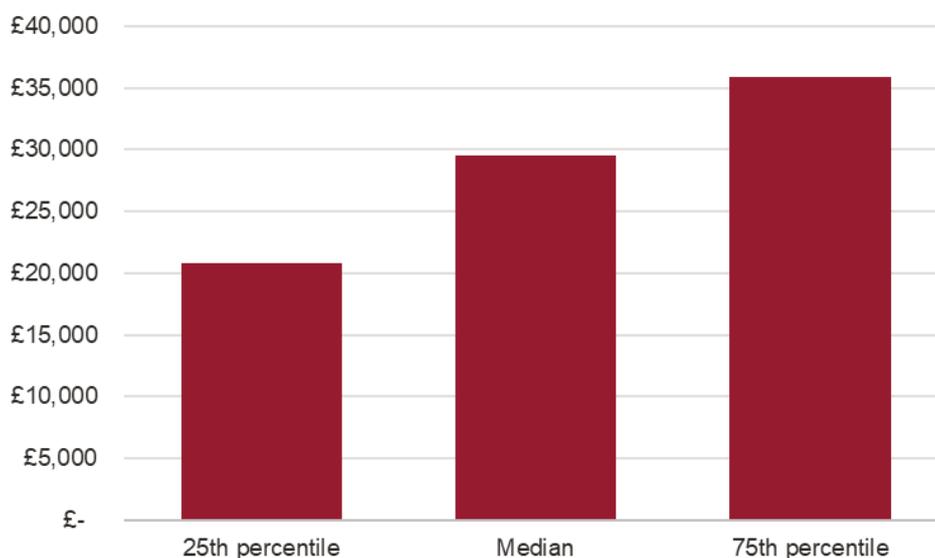
Source: Frontier Economics, based on analysis of Civil Legal Aid (Remuneration) Regulations 2013 and Guideline Hourly Rates published by Courts and Tribunals Judiciary, 2024

Note: Only National rates are shown for illustrative purposes. Legal aid and Civil Justice fees for London will be marginally higher.

These stagnating legal aid fee rates have contributed to a situation where Housing legal aid revenues do not cover the costs of Housing legal aid provision. The median provider in the sample reported revenues of only £29,000 per year per fee-earner from the provision of Housing legal aid. Even providers in the top 25th percentile of revenues generated only £36,000 in revenues per year per fee-earner from Housing legal aid, falling notably short of the cost of provision. This is in stark contrast with the median fee income per fee-earner across all small and medium-sized law firms of £147,000 according to findings from the most recent LMS Benchmarking survey.²⁴ This equates to an average hourly rate of £134, based on an assumed 1,100 chargeable hours per year.

²⁴ [LMS Financial Benchmarking Survey](#), Hazlewoods LLP / Lloyds Bank, March 2024

Figure 11 Revenues from providing Housing legal aid, per FTE fee-earner



Source: Frontier Economics, based on analysis of Housing provider returns

In addition, the limited revenues and complex remuneration structure may create adverse incentives for providers, creating selection effects towards certain types of cases (as well as selection effects away from others).

Firstly, Housing legal aid work is remunerated on the basis of fixed fees (controlled work cases) or hourly rates (certificated cases, or in the event that controlled work cases exceed certain thresholds). The premise of the fixed fee arrangement is that while cases differ in complexity and practitioner time required, on average and over a sufficiently long time period, the fixed fee would cover the overall cost of provision. Put differently, any losses made on relatively more time-consuming cases should be offset by gains made on relatively less time-consuming cases. In reality however, the Housing legal aid providers we engaged with consistently reported that a large and increasing number of Legal Help cases fall within the gap between fixed fee and escape fee thresholds, making controlled work particularly loss-making and therefore disincentivising provision.

Furthermore, under current structures, remuneration rates do not vary by solicitor experience. As a result, relative recovery rates are lower for more experienced solicitors, adding further resourcing pressure to cases which can often be quite complex and require significant senior oversight.

“At the moment in [region] there’s a massive problem with Homelessness. A lot of this is complicated Legal Help work cases – which is paid at a low level, and doesn’t pay for experienced solicitors. So you end up pressured into a situation where that complicated work is being done by inexperienced people. In the end, early intervention doesn’t really pay.”

Source: Housing legal aid provider interviews, Frontier Economics

Finally, relative compensation rates vary significantly by type of work, leading to pressures for providers to be selective of what work they choose to take on:

- **Inter-partes cost orders** are typically awarded at commercial rates, which are considerably higher than current legal aid rates. Providers we interviewed (and in particular private firms) indicated their preference to take on certificated cases with a greater likelihood of success for this reason.
- Providers which were representatives of the **Housing Loss Prevention Advice Service (HLPAS) scheme** in their area often noted that this service was costly to run and loss-making. Smaller providers have noted that the current model is especially not fit-for-purpose for low volume regions where the minimum guaranteed fee may not be sufficient to cover their time, travel, and administration costs.

“We used to be the duty solicitors at the local court. This used to take up a lot of our resources for not very much money. It was incredibly (and famously) uneconomic, and was basically subsidised via the grant funding.”

Source: Housing legal aid provider interviews, Frontier Economics

4.4 Wider issues faced by Housing legal aid providers

The lack of profitability of Housing legal aid is leading to significant challenges in the recruitment and retention of solicitors, as well as wider concerns around access to justice.

4.4.1 Challenges in recruitment and retention

Providers noted high levels of turnover particularly in junior grades such as paralegals and trainees, who were leaving for seemingly better roles in terms of pay or work-life balance once they had obtained the benefits of training and experience at legal aid firms.

“We have no difficulty recruiting trainees but they leave us for more money elsewhere within a year or two of qualification.”

“It’s really hard to recruit and retain people, and a lot of skills have been lost over the last ten years.”

Source: Housing legal aid provider interviews, Frontier Economics

This is creating a hollowing-out of the workforce, with fewer paralegals and trainees advancing to senior solicitor grades. The high turnover rates also create burdens on senior legal aid practitioners who are responsible for supervision and training and must carry out these duties frequently as new colleagues are brought on.

Furthermore, several firms noted a scarcity of supervisors within the profession. On the one hand, the high levels of turnover have meant that fewer solicitors are making it through the pipeline to more senior roles. On the other hand, recruiting experienced solicitors from the private sector also fails to solve the problem, as these individuals lack the specific Housing legal aid experience which is needed to perform the supervisory role.

As a result, organisations are looking increasingly towards the training of junior staff as the solution, but this takes time and is problematic due to high staff turnover rates.

“I can’t hire a supervisor – nobody can. So you have to actually grow them, and that takes at least three years.”

Source: Housing legal aid provider interviews, Frontier Economics

While remuneration is a large part of the issue, other factors are also significant. Providers cited the following barriers to recruitment and retention.

- **Uncompetitive salaries:** There is a widening gap between the pay which legal aid firms can offer, and what graduates can expect to earn in other areas of public work and the private sector. Furthermore, there is a changing context in which students are entering the profession, as graduates are typically starting work with much higher levels of student debt, and a higher cost of living than in previous years. This makes legal aid salaries all the more unattractive.
- **A challenging work environment:** Many providers pointed to the high levels of stress and burnout experienced by solicitors in the field, which is exacerbated by the administrative requirements associated with Housing legal aid work.
- **Lack of prestige:** Some providers noted an absence of the prestige and pride that once drew them into the profession, and suggested the need to re-establish legal aid as ‘a coveted role’.
- **Barriers to recruitment across borders:** The devolution of Housing policy and legislation in England & Wales has led to a divergence between the Welsh and English legal aid contexts. This means that the scope for recruitment of solicitors between countries is limited.

The consequences of this adds further costs to businesses, adding to the myriad of challenges which providers continue to face.

For instance, providers explain that staff absences and vacancies are increasingly prevalent. This in turn has the effect of putting pressure on remaining staff, as teams become smaller, and these same individuals must take on increasing volumes of work. By extension, firms are also experiencing a higher frequency of long-term vacancies. In the short run, this results in deficits against the firm’s budgets, and in the long run, this affects the firm’s capacity levels.

“Staff absences and vacancies are increasingly prevalent. Fewer services, fewer people, fewer providers. This puts more pressure on the providers which are left.”

Source: Housing legal aid provider interviews, Frontier Economics

Some firms which conduct private work in addition to legal aid work explained that they operated remuneration policies where all fee-earners at similar grades are paid the same salary. This implied that legal aid fee-earners on the one hand experienced better pay than others in the legal aid market, but private fee-earners on the other hand experienced depressed rates compared to prevailing private market rates. Over the years, this has

ultimately resulted in fee-earners with private paying practices leaving the firm for competitors who could offer significantly higher salaries.

“We operate a pay-parity pay scale, where fee-earners are paid the same salary based on PQE levels. This means that fee-earners that have a significant legal aid practice are paid reasonably well compared to market rates, however fee-earners that have a predominantly privately paying practice are paid considerably under market rate. This results in fee-earners that have privately paying practices leaving the firm to join firms that don't do legal aid for significantly higher salaries (salaries that we can't afford).”

Source: Housing legal aid provider interviews, Frontier Economics

In addition to fewer graduates applying for Housing legal aid roles, providers felt that the quality of these candidates had decreased over time. For instance, they noted that fewer candidates had prior practical experience, and so required more training than previously. They also pointed to a loss of legal aid skills over the last decade, owing to the reduction scope of legal aid since the LASPO reforms.

“The paralegals in the firm used to arrive in the firm having done something else with experience. Now we get complete ‘clean skins’, with no experience that need to be trained up. But training takes time. Paralegals tend to come and spend 6 months, maybe a year with you – then, when they've got really good training, they then leave to get paid twice as much at a private firm. This has happened to us at least half a dozen times.”

Source: Housing legal aid provider interviews, Frontier Economics

Finally, more than one provider indicated that their recruitment issues often forced more senior solicitors to complete the simpler tasks on cases. However, in the context of inter-partes billing, opponents (and the Courts) would often take the view that since these tasks should have been completed by more junior colleagues, remuneration for these tasks should take place at lower levels. This represents an additional hidden cost which providers must absorb.

“When we get paid by the other side, we're often criticised that we don't delegate appropriately. But we have no one to delegate to, as we can't retain Level Cs. But it's also not the paying party's fault that we can't retain Level Cs. So then we get paid Level C rate for the Level A work that we do, because the court think it should be done by Level Cs.”

Source: Housing legal aid provider interviews, Frontier Economics

4.4.2 The sustainability of Housing legal aid

The financial and workforce challenges experienced by the sector call into question the long-term viability of Housing legal aid provision.

“If I hadn't been the Partner here, and been here for so long, I don't know whether my Partner would have continued to do Housing anyway.”

“It's an exercise in withering on the vine. We're all quite old. I look at it and think, in 10 years' time there won't be any legal aid work.”

Source: Housing legal aid provider interviews, Frontier Economics

A wide variety of sources point to unsustainably low levels of Housing legal aid provision. Data from the LAA²⁵ shows that in the last five years the number of Housing legal aid providers has reduced by one-quarter. Qualitative discussions with Housing legal aid providers in rural areas of England also indicate that it has been difficult to tender legal aid contracts in parts of the country.

Figure 12 Housing legal aid provision over time



Source: Frontier Economics, based on analysis of [Legal aid statistics](#), October – December 2023, Ministry of Justice / Legal Aid Agency

Note: The slight increase observed in September 2023 reflects the LAA tender process which commenced on 1 September 2023. Previous contracts had started in 2018, with no other opportunities for organisations to bid in between.

This has given rise to the issue of so-called ‘legal aid deserts’ in large areas of the country, referring to a complete absence of Housing legal aid providers. The Law Society noted that in March 2023, 25.3 million (42%) people did not have access to a local Housing legal aid provider²⁶.

The lack of provision is worsened as existing providers move away from offering the full range of Housing legal aid support, leaving gaps in the provision of certain types of services. This may be due to capacity constraints or selection effects.

- **Capacity constraints:** A key driver for this is an excess demand for legal aid being spread over fewer providers as provider exit rates increase. In addition, as revenue constraints tighten, providers note that they are increasingly required to focus attention away from legal aid work towards other fundraising activities to enable the cross-subsidisation of legal aid work.

²⁵ [Legal aid provider contract statistics](#), Legal Aid Agency. Calculated over the period September 2018 – September 2023.

²⁶ [Legal aid deserts](#), The Law Society, last accessed January 2024

- **Selection effects:** The low profitability of legal aid leads to the active decision by providers to select cases with better expected remuneration rates, or lower expected risk.

5 Findings: Family legal aid

5.1 Profitability in Family legal aid is mixed

Qualitative feedback from legal aid providers suggests that Family legal aid has historically been more profitable than other areas of legal aid. Reliance on privately paid work was previously not necessary, and so many firms favoured specialising in this type of work. Despite this, recent cost pressures and the lack of corresponding increase in legal aid fee rates have meant that Family legal aid is now loss-making for half of the providers that we have engaged with.

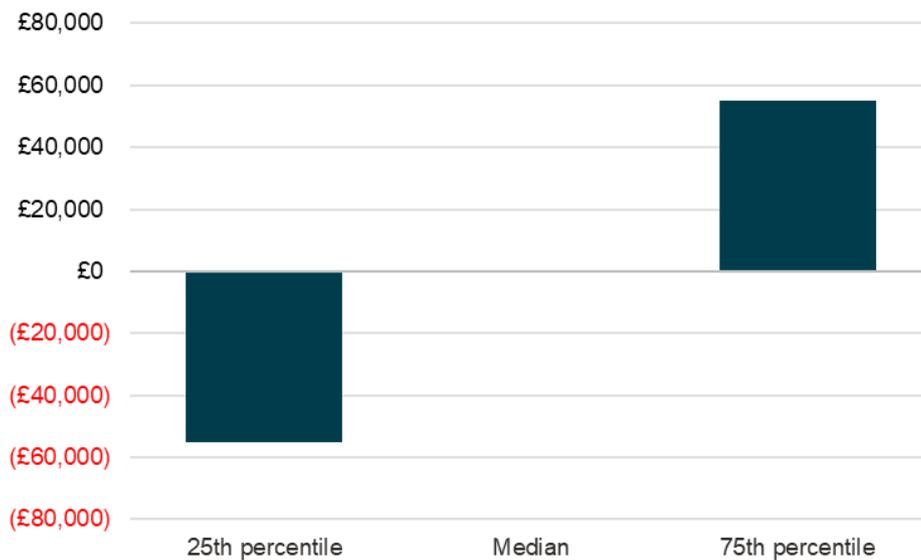
“I’ve been a solicitor since 1996. Over that time, legal aid rates have had such a decimating effect that the profit margins have been squeezed to beyond squeaking.”

“Frankly all legal aid rates need increasing because they haven’t increased in donkeys’ years, but the squeeze on what we have to pay staff, and what we get remunerated, means that they will be doing less and less of the work to help people.”

Source: Family legal aid provider interviews, Frontier Economics

The median provider in the sample generated no profit (or loss) from providing Family legal aid, reaching their “break-even” point. Providers in the bottom 25th percentile of profitability reported losses of more than £55,000 per year, translating to a loss of almost £13,000 per FTE fee-earner on average providing Family legal aid. Providers in the top 25th percentile of profitability reported profits of £55,000 per FTE fee-earner per year, translating to a profit of £11,000 per FTE fee-earner on average providing Family legal aid. This is illustrated in Figure 13 and Figure 14 below. While it is difficult to draw definite conclusions given the limited sample size of providers available for this research, Family providers’ losses appear to be primarily driven by the provision of private Family legal aid work, while the profits are primarily driven by the provision of public Family legal aid work.

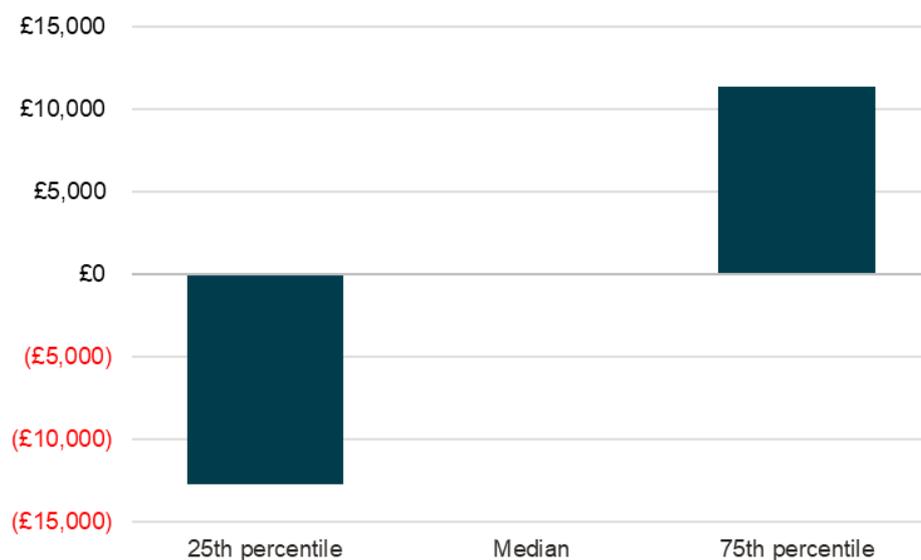
Figure 13 Total profits (losses) from providing Family legal aid, per provider



Source: Frontier Economics, based on analysis of Family provider returns

Note: In line with accounting conventions, figures in brackets indicate losses.

Figure 14 Profits (losses) from providing Family legal aid, per FTE fee-earner



Source: Frontier Economics, based on analysis of Family provider returns

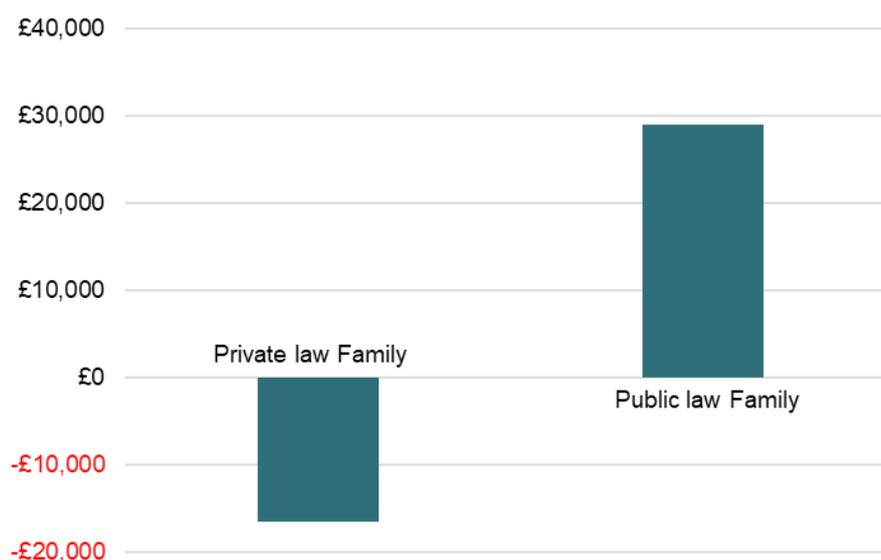
Note: In line with accounting conventions, figures in brackets indicate losses.

Family law is split into two categories: private law and public law. Private law Family proceedings cover family breakdown cases between two individuals, often in relation to parental separation, while public law Family proceedings typically cover care proceedings involving social services.

The financial information provided suggests that while Family legal providers are struggling overall, there is a notable difference in profitability between private and public Family legal aid work. Multiple providers in our sample stressed that the provision of private law Family legal aid was financially unviable, with a fifth of providers in our sample choosing not to provide these services at all, and 70% of those that do focussing less on private law Family than public law Family work.

This is consistent with the financial data reported by these providers. As illustrated in Figure 15, the median provider made a loss of more than £16,000 per year from private law Family legal aid. By comparison, the median provider in our sample generated a profit of nearly £30,000 per year from public law Family legal aid.

Figure 15 Total profits (losses) per provider from providing public law Family legal aid and private law Family legal aid, median provider



Source: Frontier Economics, based on analysis of Family provider returns

Note: In line with accounting conventions, figures in brackets indicate losses.

Only one third of providers offering private law Family legal aid services were able to cover the associated costs, but in comparison more than 60% of the providers were able to cover the costs associated with public Family legal aid.

“We made the difficult decision to stop offering private law legal aid (having made the decision to stop doing Legal Help work already last year).”

“Currently we only do public law Family work, as we cannot even begin to make private law Family legal aid work successful. The fees are just way too low.”

“We simply can’t afford to do private Family legal aid.”

Source: Family legal aid provider interviews, Frontier Economics

As well as shifting the type of legal aid work that they undertake, Family solicitors predominantly deal with the financial challenges they face by:

- **Working longer hours**

“The amount of work we are doing has increased exponentially – so we work longer hours (60-hour weeks) in order to make the same amount as we used to. But this is coming at the cost of everyone’s burnout and mental health.”

Source: Family legal aid provider interviews, Frontier Economics

- **Taking on a higher caseload than previously**

“When I look back 21 years ago, a typical public law fee-earner would have had 4-5 cases – it was hourly rate at the time and they could generate enough income on that caseload. Our public law fee-earners now probably carry about 16-17 cases in order to get sufficient income.”

Source: Family legal aid provider interviews, Frontier Economics

- **Taking on privately paid cases**

“Our way of coping with it as a department is to take on a private [paying] client solicitor (for the first time 18 months ago), and for the existing solicitors to try to put some private client work into their practise as well.”

Source: Family legal aid provider interviews, Frontier Economics

- **Allocating junior team members to less well remunerated legal aid cases**

“We have to tailor who works on which category of work. It will pretty much be exclusively trainees and caseworkers who will work on our Legal Help work – it’s not profitable otherwise.”

Source: Family legal aid provider interviews, Frontier Economics

As with Housing, the provision of Family legal aid is dependent on the good will and moral conscience of solicitors working in legal aid.

“I don’t know if it will be possible to continue this in the long term – if we didn’t have the motivation of helping the vulnerable we simply wouldn’t do it.”

“We keep going because we are all from the local area, and have a passion for helping people. You see people suffer and you want to give them that better option of a life and by getting them with the protection and helping with the children.”

“Psychologically, it would take a lot for me to stop offering legal aid – if we don’t do it, there are some real access to justice concerns. But equally, we’ve got to pay the bills.”

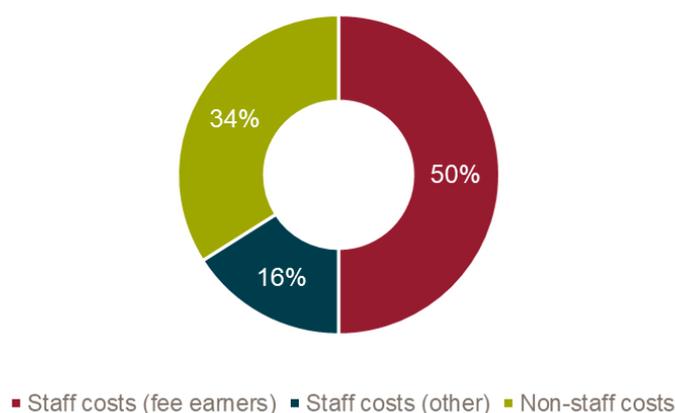
Source: Family legal aid provider interviews, Frontier Economics

5.2 The costs of providing Family legal aid have increased over time

The majority of providers noted that the legal aid income they currently receive does not cover their costs of providing legal aid, and indicated that much of the deficit must be covered by alternative income sources.

A large portion of these costs are fee-earner salaries, with on average 16% of costs coming from support staff salaries, and 34% of costs coming from non-staff costs (in the form of shares of overheads such as rent). This is set out in Figure 16.

Figure 16 Average cost composition of Family legal aid provider



Source: Frontier Economics, based on analysis of Family provider returns

By comparison, the LMS Financial Benchmarking Survey²⁷ indicates that the average firm in 2023/24 spent 51%²⁸ of total costs on non-staff costs. As for Housing, this figure is notably higher than average expenditures by Family legal aid providers.

The median provider in the sample incurred a cost of £89,000 per FTE fee-earner to provide Family legal aid services, as illustrated in Figure 17.

Family legal aid solicitors can expect hourly rates of £32 - £71²⁹, depending on the type of work and location (enhancements of these fees up to 100% are possible for elements of complex work on certificated cases³⁰). The effective hourly rate that a fee-earner receives would clearly depend on the mix of work they conduct, but based on the midpoint of this range (£52), a fee-earner would need to bill over 1,700 hours per year in order to cover these costs. This implies a billable utilisation rate for every fee-earner of over 105% just to break even³¹.

²⁷ [LMS Financial Benchmarking Survey](#), Hazlewoods LLP / Lloyds Bank, March 2024

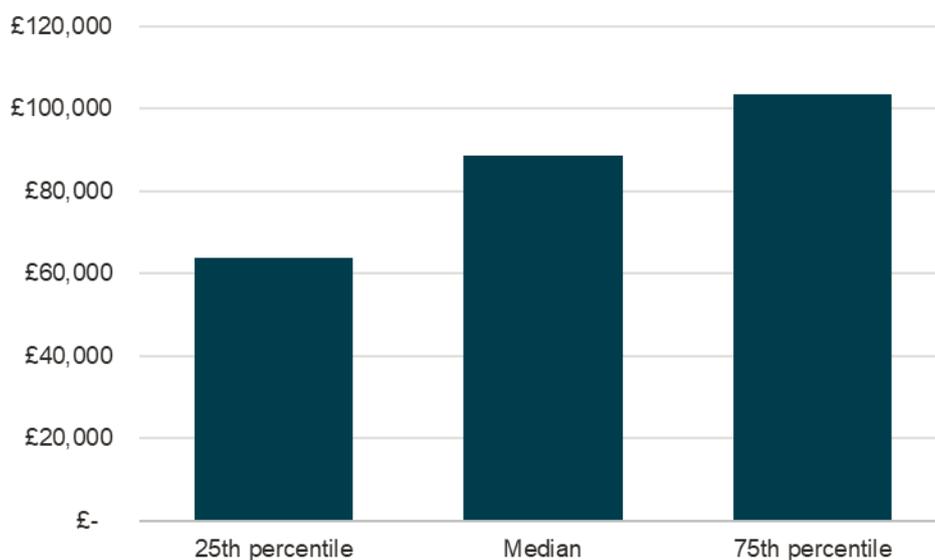
²⁸ This figure includes super-profits earned by law firm Partners. Nevertheless, the proportion of non-staff cost spend remains significantly higher than average expenditures by Family legal aid providers even when excluding the super-profits category from total costs.

²⁹ All rates available at [The Civil Legal Aid \(Remuneration\) Regulations 2013](#), legislation.gov.uk, last accessed April 2024

³⁰ See Section 12 of [Costs Assessment Guidance: for use with the 2018 Standard Civil Contracts](#), Legal Aid Agency, December 2023

³¹ Based on an assumed 7 working hours per day, for 225 working days per year.

Figure 17 Costs of providing Family legal aid, per FTE fee-earner



Source: Frontier Economics, based on analysis of Family provider returns

However, as with Housing, providers have reported that the administrative burden associated with Family legal aid is a significant driver of costs and represents a key barrier to entry and expansion.

“The administrative burden from this completely broken system from a bureaucratic perspective is in danger of being literally the straw that breaks the camel’s back.”

Source: Family legal aid provider interviews, Frontier Economics

Firstly, legal practitioners require legal aid training, which includes learning about the assessment process for legal aid and how to process claims. Since this work is typically conducted by more junior staff such as trainees and caseworkers, this requires a lot of senior time to be directed towards supervision and training.

Secondly, new clients need to be triaged in line with the legal aid eligibility requirements of scope, merits and financial eligibility. The gateway evidence requirement (which requires proving that a client is a victim of domestic abuse) is considered to be particularly onerous, as often the client is unable to provide the level of information required. Should new clients need alternative support (which may not be covered by legal aid), they need to be signposted to this. Providers indicated that if the LAA were to take on the role of triaging, this would lift a significant amount of risk and cost from providers.

“We operate a helpline (two salaries at Living Wage) which deals with the new enquiries that come into the firm and triages them based on capacity and whether they meet the means and merits test. This process costs us in excess of £40,000 per annum, to simply triage the enquiries that come in.”

“Before we even sign the client up and talk to them about their actual problem, we have to jump through this [eligibility] hurdle. If that bit’s been done separately to us, and they

just come to us for the legal work, then I think that would create a much more streamlined and sensible approach from the client's point of view."

Source: Family legal aid provider interviews, Frontier Economics

In addition, billing for legal aid work was reported to be particularly time-consuming, with various blockages experienced by providers along the way. For example, providers are required to upload their legal aid claims to two separate systems³², each which have been described as rather outdated and not particularly user-friendly. Providers point to additional challenges faced in receiving payment when, as is often the case, a case has been transferred through multiple law firms.

"We're at the point where we don't take any cases on from other solicitors, as it's not worth the risks to actually getting paid."

Source: Family legal aid provider interviews, Frontier Economics

Once billing systems have been navigated, providers must make sure to comply with LAA audit requirements, which are considered to be significantly more stringent than for private practice. Providers associate the audit process with high risk and little flexibility, and explain that it adds uncertainty surrounding the timing and quantity of payment to be expected. Because of these concerns, law firms expend a huge amount of resource into making sure that reporting is correct and of the precise format expected by the LAA.

The audit process is considered to be particularly onerous in its assessment of providers' eligibility screening for legal aid. This is so much so that providers describe their preference to avoid this process altogether and prioritise areas of law which do not require these eligibility checks at all – i.e. public law Family work, which is non-means, non-merits tested and primarily certificated, and therefore not subject to the same risk of investigation and recoupment of monies.

This was reflected by the firms in our sample exhibiting a strong preference for certificated work (Family Help Higher and Legal Representation), which constituted over 90% of the caseload on average across our sample.

"Eligibility is a huge issue in private Family law, due to how much the government has restricted the eligible areas and who can access it. There are huge costs associated with just determining if someone is eligible, which is part of why we don't really do this kind of work and just focus on childcare proceedings."

"It not the speed of decision but the fact that they feel they can say no when the judges said yes. And the appeal process requires a lot of effort – and we don't get paid for any of that, but if we don't appeal we won't get paid whatsoever. So there is all that additional administration cost as well."

Source: Family legal aid provider interviews, Frontier Economics

³² The Contracted Work and Administration (CWA) for Legal Help cases and the Client and Cost Management System (CCMS) for certificated cases.

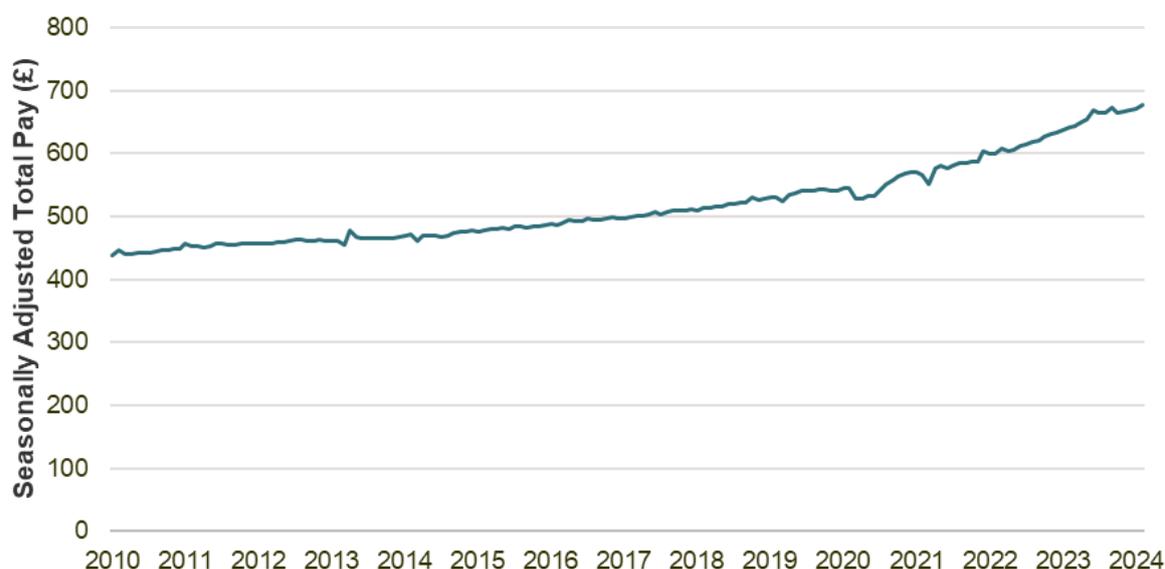
As a result of all the above, providers explain that they find themselves spending more time dealing with administrative issues – that specifically relate to legal aid, but which they are not remunerated for – than practicing ‘real’ law.

In addition to the administrative costs, some providers reported that cases are typically now more complex and last longer than previously, owing largely to court delays which are in turn increasing the costs incurred during a case. This was explained to be the result of a combination of factors:

- Courts are experiencing significant backlogs, particularly following the COVID-19 pandemic, which is extending the length of legal aid cases as resolutions are obtained with delay. We found the level of concern to vary by locality, with providers in some regions reporting this as a larger issue than others.
- Providers feel that a key contributor to these court delays is an under-provision of early legal advice, leading individuals to be unnecessarily litigious and not directed out of the court system towards other possible solutions at an early stage.
- Another factor exacerbating the court delays is the increasing trend of litigants-in-person (LIPs), or individuals who self-represent in court. This is an issue which has arisen as a result of the LASPO reforms removing key areas of Family law out of the scope of legal aid, as well as the lack of legal aid providers in recent years. Providers explained that in cases where one party is legally represented and the other is not, there is a greater legal load which must be taken on by the represented party, to complete the legal administration on behalf of both parties. Furthermore, this issue may lead to wasted court time, given that LIPs are rarely legally trained and may not understand the law or procedure which applies in their cases, and are emotionally invested in their cases.
- Finally, some providers noted that the COVID-19 pandemic and the cost of living crisis have led clients to be more adversarial and demanding than previously.

As in Housing, Family legal aid providers reported that the low fee rates for legal aid leave very little surplus with which to conduct the ordinary activities required in the running of a legal practice. Providers explained that the time spent on these activities was inflating the cost of providing a legal aid service as time is directed away from supporting legal aid clients and earning the associated revenue. Providers also noted that these activities can act as a barrier for new entrants who may struggle to understand and undertake these requirements.

This is exacerbated by the effects of inflation and rising costs in general over time, contributing to increased operating costs in recent years (see Figure 9). Staff costs represent the principal source of cost pressure. Figure 18 below sets out the rise of wage inflation in recent years, which is contributing to higher costs for firms, since they must keep up with market rates in order to retain their staff. Without a corresponding increase in legal aid remuneration, this is having the effect of compressing margins each year.

Figure 18 UK Average Weekly Earnings

Source: Frontier Economics, based on analysis of Average Weekly Earnings, Office for National Statistics, last accessed April 2024

Consequently, Family legal aid providers are taking a variety of approaches to keep costs efficient and operate as thinly as possible.

“We don’t have pension schemes; we can’t afford any of the niceties that go round the edges of a package that you might have.”

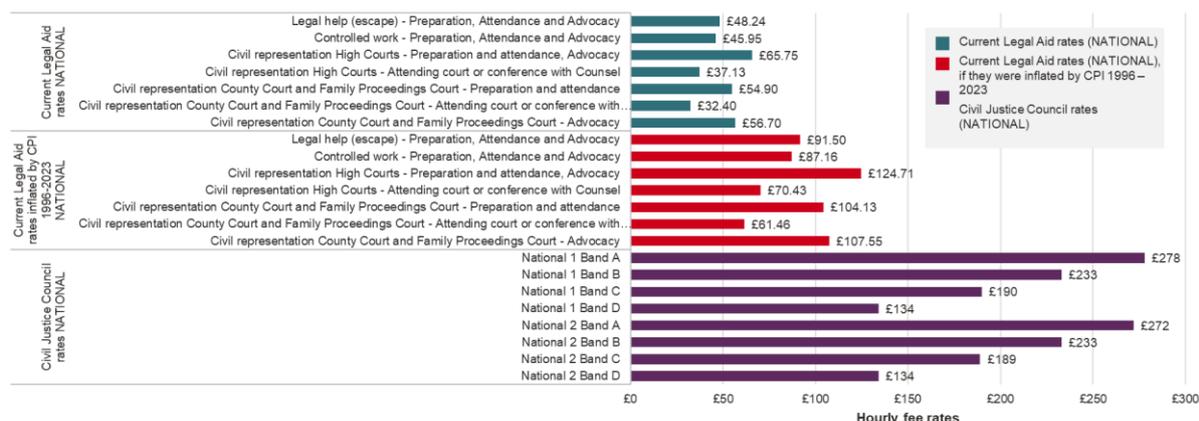
“What we’ve done is build relationships with our local domestic violence support organisations. We’ve had a project which... places a member of our organisation in with domestic violence support organisations, and that facilitates referrals of their clients into our organisation. They can produce a document which satisfies the criteria for the gateway evidence, and they can also conduct a legal health check, so if they’ve got any other legal issues, they can refer into other teams within the organisation.”

Source: Family legal aid provider interviews, Frontier Economics

5.3 Sustained low fee rates are causing concerns in the Family market

Revenue pressures are significant in the context of Family legal aid. Similar to Housing, there is a large and widening gulf between legal aid and commercial rates, with Family rates as low as or lower than Housing in some cases.

Figure 19 Family legal aid fee rates (2013) and Guideline Hourly Rates for Solicitors and Legal Executives (2024)



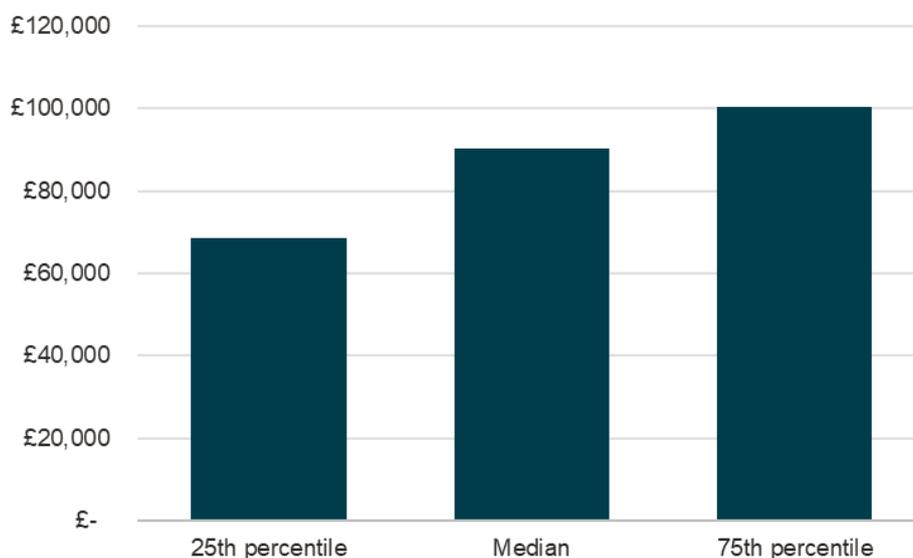
Source: Frontier Economics, based on analysis of Civil Legal Aid (Remuneration) Regulations 2013 and Guideline Hourly Rates published by Courts and Tribunals Judiciary

Note: Only National rates are shown for illustrative purposes. Legal aid and Civil Justice fees for London will be marginally higher.

Family legal aid solicitors can expect hourly rates of £32 - £71³³, depending on the type of work and location. This is as compared with hourly rates of £87 - £137 if these rates had increased in line with inflation, and guideline hourly rates published by Courts and Tribunals Judiciary from 1 January 2024³⁴ ranging from £134 - £546 based on solicitor experience and geographic location. As a result, all but two providers in our sample were found to rely in some part on private paying work to support their incomes.

³³ All rates available at [The Civil Legal Aid \(Remuneration\) Regulations 2013](https://legislation.gov.uk), legislation.gov.uk, last accessed April 2024

³⁴ [New Guideline Hourly Rates](#), Courts and Tribunals Judiciary, December 2023

Figure 20 Revenues from providing Family legal aid, per FTE fee-earner

Source: Frontier Economics, based on analysis of Family provider returns

As in Housing, all providers indicated fixed fee rates as a pressure point. Providers described that the length of time required to complete the necessary work was rarely met by the fixed fee rate received (a series of graduated fees starting at £86 for private law Family cases and £132 for public law Family cases). They also pointed to the disproportionate cost and effort that was eventually required in order to audit this work.

“The fixed fees are diabolical really. There will be no case that is under that, because no case concludes in less than 7 hours of work.”

“Legal Help in Family is £86 – 1.5 hours of work at best at legal aid pay rates. You’d have at least a half hour appointment with the client plus at least an hour doing the means assessment. So that’s your 1.5 hours before you’ve done anything. After this, you’re working for free.”

“Legal Help needs complete reform. You’re spending hours and hours auditing legal help forms and reporting to the National Audit Office, peer reviewing, etc. So they have a massive admin burden on their side, we have a massive admin burden on our side, and when it comes to the annual audit they will audit around 14-15 family help legal files. In terms of fees, these cases will have netted us maybe a couple thousand pounds, and yet we will have spent hours and hours administering and auditing them.”

Source: Family legal aid provider interviews, Frontier Economics

Relative compensation rates in Family legal aid once again vary significantly by type of work, leading to incentives for providers to be selective of the work that they choose to take on. In particular, private law Family work reflected a minority of the caseload for the majority of our provider sample.

Some qualitative insights behind this are set out below.

- **Private law finance:** In general, providers indicated this as the area which was least well remunerated by legal aid, due to the considerable amount of information gathering that is typically required up-front at the Legal Help level. Providers also described this as the area subject to the highest risk of litigation by dissatisfied clients, which represents another barrier to service provision. Given these factors, anecdotal evidence suggests that solicitors specialising in finance typically favour more private-paying work which is remunerated at better rates.
- **Private law divorce:** These cases were also noted as an area with very low returns, given that the majority of work must be completed under fixed fee arrangements. Providers noted that this work is typically remunerated at a fraction of the private rates.
- **Public law care proceedings:** Increasingly favoured by providers over the years as legal aid for these cases is granted on a non-means, non-merits basis. This means that it is much easier to administer and less exposed to audit risk. This work was also described as more complex, and typically carried out by more experienced members of the team. While the length and complexity of these cases implies a greater likelihood of escape at fixed fee levels, providers were keen to emphasise that it was still necessary to take on significant caseloads and to take on advocacy responsibilities internally where their experience and skillset allowed, in order to turn profit for these cases.

As a result of the low sustained levels of legal aid revenues that firms have experienced over the last decades, providers have been required to take on larger caseloads in order to generate sufficient income to cover costs and subsidise their legal aid work with other sources of income.

“We could have 10 private cases and we could have an absolute dream of a professional career. But to get the fees from those 10 private cases we would have to manage 80, 90, 100 [legal aid] cases.”

“We have paralegals billing more in our private work than 15+ PQE solicitors in legal aid; it’s horrendous from a morale standpoint.”

Source: Family legal aid provider interviews, Frontier Economics

Staff members are in turn paid at significantly lower salaries compared to the private paying and commercial sector, which has significantly discouraged talent from choosing careers in legal aid. One provider pointed to the fact that this has led to a stark gender inequality in their firm, owing to the greater likelihood of females to accept lower salaries than males.

“There is also gender inequality as family law is very heavily female – and that is partly because we are more likely to take a lower salary than men – so it expands the gender pay gap. If the salary was there it might attract more men. But legal aid just can’t match other types of law.”

Source: Family legal aid provider interviews, Frontier Economics

5.4 Wider issues faced by Family legal aid providers

Family legal aid providers seem to be following a similar trajectory to their Housing legal aid counterparts.

5.4.1 Availability of legal counsel and other experts

Over half of the providers we spoke with pointed to the availability of legal counsel as a limiting factor for the cases that they took on.

We heard that providers often struggle to secure barrister representation for their clients due to the sizeable discrepancies in compensation between legal aid and other work. A barrister might expect to receive £300 for a legal aid hearing, but the same work in the private sector would more likely compensate them by ten times as much.

“When we look to our colleagues for help, i.e. try and find a barrister to cover a hearing, there are none. It’s not unusual to make 20 calls to try and get a hearing covered – they won’t do it because nobody wants to take legal aid rates.”

“We haven’t been able to get anyone remotely good on the barrister side to do legal aid finances within the past 5 years, which makes us feel very uncomfortable. And over the past 3 years, this is starting to happen for private law children work as well. We can still do it, but the number of people doing the work is really drying up.”

Source: Family legal aid provider interviews, Frontier Economics

As a result, firms have increasingly opted to keep the advocacy in-house where their experience and skillset allowed, which brings in more fees on the one hand, but adds pressure on providers to prepare for court on the other hand.

“Usually it would be me dealing with these cases. If I’m out for a day at court doing one of those cases, there’s probably 0.5-1 days of preparation and producing the necessary court documents, e.g. a court bundle. That is time that could be spent on doing other work.”

Source: Family legal aid provider interviews, Frontier Economics

Where firms are able to secure barrister representation, they note that they are often sent pupils or newly qualified barristers, who may not have the experience of dealing with the complexity of legal aid cases, and are often outranked by the opposing counsel where they are privately funded.

This exposes legal aid firms to significant risk. One provider described the experience of being investigated by the Legal Ombudsman following a complaint by a client regarding the barrister that was appointed to their case.

“The other risk of that is that you may have a junior barrister, who may not give the best advice, to put it bluntly. And that comes back to the risk again – we’re the ones who are being possibly sued for negligence at the end of the day. We are always wary of that in

using junior staff to do work that is actually more complex than private paying work in a lot of instances.”

Source: Family legal aid provider interviews, Frontier Economics

Providers described similar difficult experiences in securing experts for legal aid cases, including translators and medical experts.

“It’s also really difficult to get the experts that some cases need. For example, in some cases we need the best neurologist to have a look at these children, but the best neurologists in the country won’t look at the children because they’re not getting paid appropriately. They’re getting paid legal aid rates. One specific case was where the judge said we can’t have any other doctor except this doctor who is at Great Ormond St. And we had to put a massive appeal into the legal aid, a massive effort to try and have this doctor’s fees approved. And all this time this baby – that had brain damage from what the father had done to him – had to wait until the legal aid got the go ahead.”

“We also need to get translators a lot of the time. Take for example Farsi, where there are only two in the whole country that were willing to do it for legal aid. They are not from [the region], and so we are having to do it through the video link in court (because legal aid won’t pay travel costs) – which isn’t good for clients either.”

Source: Family legal aid provider interviews, Frontier Economics

5.4.2 Challenges in recruitment and retention

High levels of turnover are seen in both Housing legal aid and Family legal aid providers. Firms cited the challenges of employee retention, with individuals most frequently leaving to find better jobs in terms of pay, job security and work-life balance.

“Where we’ve lost people in the past, it has been to local authorities (where they have more job security and no targets), central government, or private practice.”

“As of yesterday, we’ve got 12 trainee solicitors working for us, and we’ll be supporting them over the next 18 months. I guarantee that within three years, if we end up with 3 of them staying in the organisation, I think we’ll have really done well.”

Source: Family legal aid provider interviews, Frontier Economics

Low pay was considered by firms to be a primary factor behind this trend, paired with highly complex, stressful and emotional work. The pay disparity with the private sector was noted to be particularly acute for certain areas of the profession, such as private law finance solicitors.

“In their minds, they’ll say “but I’m doing such a fantastic job, I am literally changing somebody’s life, I am helping and protecting the vulnerable, I am doing it for peanuts – and you still want more? Is this not enough?”. So you can see that people just get really demoralised and frustrated. It’s really unusual for one of our experienced people to go to a similar firm. They don’t leave this job to go to another legal aid practice up the road – I think they really like where they’re working. I think they leave because they want to do this job and they don’t want this target.”

“You’re asking quite young people to join the profession at a very low salary, but they’re dealing with domestic abuse, child abuse, horrific injuries and babies, screaming and

shouting clients, drugs and alcohol, mental disabilities, all sorts. So you really do have to love the work to keep doing it.”

Source: Family legal aid provider interviews, Frontier Economics

These issues were noted across the board, at all levels of the profession. Providers explained that the rising cost of living made the modest salaries to be earned on legal aid untenable, and that this was compounded by a lack of other employment benefits, such as the provision of travel expenses or attractive pensions packages.

“We’ve lost a lot of good people at 2-3 years qualified, after we’ve trained them. At a certain point they want to move on with their careers, or do things like get a house and get married, and I can’t give them a salary that allows them to do that. We’re even losing very senior people who are going to the local authority as it makes more financial sense for them, once you factor in pensions.”

“London is a very expensive place to live. So you can’t accept a salary of less than X, because you’ve got a mortgage, a baby, an unemployed partner. There’s lots of stuff going on with other people’s lives that they have to grapple with.”

Source: Family legal aid provider interviews, Frontier Economics

The recruitment environment was also noted to be increasingly sparse over the years, leaving little prospect for respite in the future. Providers explained that the profession no longer attracts the same numbers of people, as it is now restricted to those who can afford to earn the salary of a Family legal aid solicitor.

“We’re not finding the same numbers of people coming to work for the profession anymore. It’s really stark as compared to say 10-20 years ago. In the recruitment process even 10 years ago, we would have maybe 100 applicants for each post of trainee solicitor. And it would take a while to sift through the applications. Now I would say that we get between 10-15 for each post that we advertise.”

“Even though we are really good firm, we’re in Chambers, we’re in Legal 500, we’ve got recommended lawyers, and we are usually shortlisted for fantastic prizes because we’re so good, we’re not the first choice of very many new Family law graduates.”

Source: Family legal aid provider interviews, Frontier Economics

This has had considerable impacts on legal aid firms over the years, who told us that they lacked the funds to invest in recruitment and make any real capacity improvements.

“In terms of recruitment, there just isn’t the profitability to expand it.”

“It’s very difficult to justify using a recruitment agency because the cost is prohibitive.”

“We try our hardest to be good employers, and offer other incentives. e.g. we always have a staff social day a year, extra days over Christmas. We do what we can.”

Source: Family legal aid provider interviews, Frontier Economics

Firms indicated the significant compromises they were faced with, in terms of service delivery, as complex and technical legal aid work must be taken on by unqualified caseworkers or junior staff. These individuals must in turn be closely supervised by senior practitioners, costing the work-life balance of all staff in the firm.

“Recruitment is difficult, because salary impacts who you can recruit. You’re somewhat forced to have work done by unqualified caseworkers, which creates a whole host of issues as the work is technical and complicated, and it’s a high-risk area in terms of negligence claims for lawyers. You need experience to do these things correctly, but it’s hard to justify the salaries for experienced workers.”

“The people you can get to join Family legal aid will invariably be pretty junior, and require considerable supervision. There would be a lead period of at least 18 months before a new joiner would effectively be earning more than the cost of employing them. This creates a considerable upfront loss in taking someone on.”

Source: Family legal aid provider interviews, Frontier Economics

Issues with recruitment and retention have also posed direct barriers to expansion for firms, despite the availability of demand for legal aid providers. Firms described the difficulties of recruiting fee-earners on the one hand, and the time lags (and risk) implied by developing fee-earners organically on the other hand.

“If we needed to recruit a fee-earner, we wouldn’t be able to do it. The last fee-earner that we recruited, she contacted us because of our reputation, and it just so happened that one of our Partners was retiring. So we could offer her a competitive salary at that point. I don’t know how we would recruit another at this point, other than home-growing them to be honest.”

“We’ve had an open advert for a Family law solicitor for 15 months – we think, touch wood, that we’ve recently recruited one. Unfortunately she’s not supervisor standard. So we’ll need to wait 18 months until she’s had 3 years continuous work in Family work – and then she’ll need to get accreditation. But within that time, I will retire – so there is a scenario that we won’t have a supervisor, and we won’t be able to operate a Family team or contract. And then, what if she moves on? We’ve grown our own Family solicitors, but they’ve all left and gone to work in private practice.”

Source: Family legal aid provider interviews, Frontier Economics

In this context, and similar to Housing legal aid providers, Family legal aid providers questioned the longer term sustainability of the profession.

“I’m massively concerned about the next generation. They require a work life balance that doing this type of work just can’t provide.”

“We’re not selling it to the next generation. The negativity around the profession and the low pay does not help its reputation and engage people to do the work.”

“If one wants to make a successful career in the law, there’s no point in my view in going into Family law. Because you’d never be able to get the attention of the partners who can elevate you into partnership status or directorship status, as you would never hit the astronomical targets that you can for example in commercial law. So people who are doing Family law are declining, and getting older and older like me.”

Source: Family legal aid provider interviews, Frontier Economics

5.4.3 The sustainability of Family legal aid

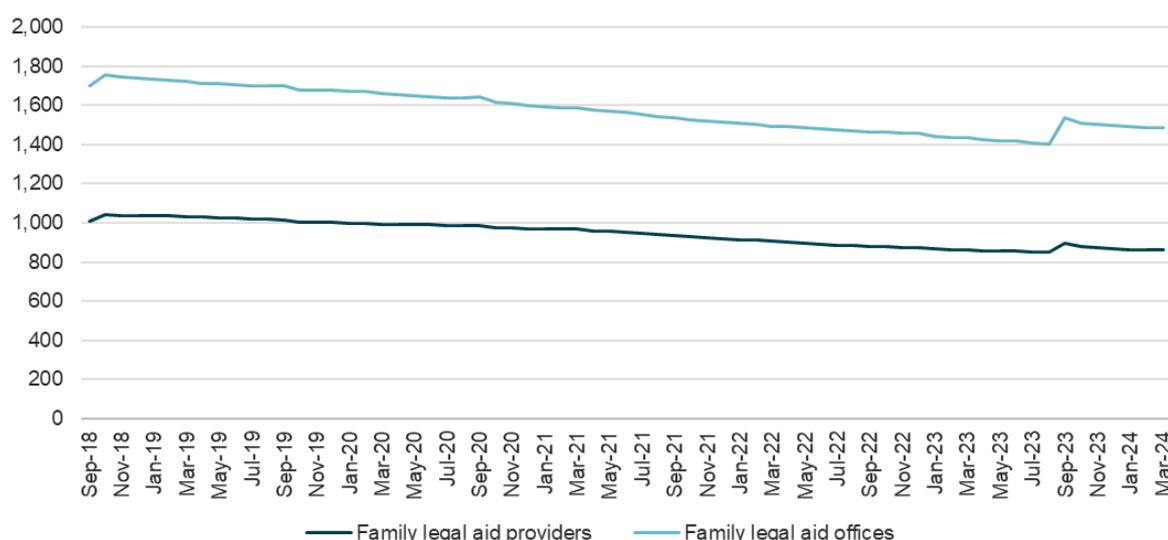
Several firms have reduced the scope of their legal aid services as a result of this constrained capacity over the years, releasing contracts and focusing on areas of work which are better remunerated.

“We used to have contracts in Housing, Crime and Mental Health, but over the years, frankly they’ve just not been economically viable. We now only hold a Family legal aid contract. Whilst I’m a mediator as well, I have not bid for Mediation contract, because I just don’t want another contract to administer.”

Source: Family legal aid provider interviews, Frontier Economics

The number of providers in the Family legal aid market has also gradually reduced over time, with 16% fewer Family legal aid providers available today as compared with five years ago³⁵.

Figure 21 Family legal aid provision over time



Source: Frontier Economics, based on analysis of [Legal aid statistics](#), October – December 2023, Ministry of Justice / Legal Aid Agency

Note: The slight increase observed in September 2023 reflects the LAA tender process which commenced on 1 September 2023. Previous contracts had started in 2018, with no other opportunities for organisations to bid in between.

“The fact that they’ve had to retender in our area speaks volumes. People aren’t renewing their contracts.”

Source: Family legal aid provider interviews, Frontier Economics

It should be noted that the lack of provision will vary by region, and this in turn will vary in intensity depending on the type of legal aid support being provided. For instance, over 50% of

³⁵ [Legal aid statistics](#), October – December 2023, Ministry of Justice / Legal Aid Agency

Family providers that we spoke to do not offer private law Family services; meaning that the statistics above underestimate the severity of lack of provision of these services in particular.

“We’ve got a few providers in the area that still do the public law work – e.g. if we’re acting for Mum in a care case, there’s probably a pick of about eight other firms that the Dad could approach. But for private law, there’s probably only about two firms that I know that do it. This is compared to when I started 21 years ago when I think every firm did it.”

“Overall, there has been a big reduction in family providers in our area, and those that are still there largely just do childcare.”

Source: Family legal aid provider interviews, Frontier Economics

The result of this is a growing pressure on existing legal aid firms, who are faced with increasing legal aid caseloads, as well as burdens on families seeking legal aid support, who are having to travel further distances in order to find solicitors willing to take on their cases. At least one quarter of the firms we spoke to indicated that they received instructions from clients far outside of their region.

“The fact that there’s an exodus from legal aid means that the people left have all the more burden. There’s loads of unmet need, and it feels terribly sad to be turning people away.”

“The frustrating thing is that they’re calling the civil legal aid advice helpline, they’re being told that they’re eligible for legal aid, but they just can’t get solicitors to do it for them.”

“In our town we only have two legal aid firms, that’s it. There used to be a lot more. The result is that some people who need legal aid help can’t get it, or they’re moving to the private sector – but many can’t afford this. There is a lot of unmet demand.”

Source: Family legal aid provider interviews, Frontier Economics

Alongside a lack of supply of legal aid providers, a number of factors serve to further reduce access to justice for those seeking legal aid.

- **Income eligibility thresholds:** As income eligibility thresholds have remained static over time and have not increased in line with inflation, fewer people each year are therefore eligible for legal aid.

“The eligibility limits haven’t changed in donkey’s years – e.g. gross income is not to exceed £2,657 a month. With the national minimum wage now increasing from April, if they’ve got a partner, the chances are that two people earning money would exceed this threshold. You can also put in a housing cap for what they pay in rent – but everybody who lives in London is going to be paying more than the housing cap.”

Source: Family legal aid provider interviews, Frontier Economics

- **An absence of early legal advice:** This was noted by providers as a contributor to unnecessarily high costs for consumers. One provider noted that several of their clients appointed them after their case had begun, as they were previously unaware that they qualified for legal aid support. Another provider indicated that the absence of early legal advice often led individuals to take more litigious action than necessary, as they had not been redirected at an earlier stage of the process.

“We get a lot of people halfway through a case. A lot of these people didn’t realise they qualified for legal aid. The reason they haven’t got legal aid previously is because no one is able to help them.”

Source: Family legal aid provider interviews, Frontier Economics

In response, providers have been seen to absorb some of the burden in order to offer some support to individuals who would no longer qualify for legal aid under the current provisions. One firm explained that they now offer discounted private rates for people who would otherwise qualify for legal aid but cannot find a provider. Another indicated that they continue to offer some legal aid services, despite the knowledge that this work will not be remunerated.

“What we have said we’ll do for people who would ordinarily be eligible for legal aid but can’t get the provider, and are in receipt of benefits, is offer them a really reduced rate (private paying work but heavily discounted). Because these people need help, where are they going to go? The rates are higher than we would get from the LAA, and without all the bureaucracy of dealing with the LAA. And we allow people to do payment plans as well. It’s never something we have historically offered, but we feel awful that we’re not offering the legal aid anymore – but we just can’t.”

“We do try to help people. I can see there are some cases we’ve taken on that we shouldn’t have, because financially they don’t make sense. Sometimes we help people even outside of the scope of legal aid, and we don’t bill. But it’s not a way to run a business.”

Source: Family legal aid provider interviews, Frontier Economics

6 Conclusions

6.1 Summary of findings

This study collected detailed financial information from 45 civil legal aid providers in Family and Housing. The data allows us to calculate the full cost of providing legal aid in these two areas and compare this with the revenues that the work can generate.

The data shows that this work is loss-making for the majority of providers that we have engaged with. Of the 45 providers we engaged with, 37 (82%) made a loss on their civil legal aid work.

There is evidence that the extent of loss-making varies somewhat by provider type and area of specialism. All Housing legal aid providers in the sample were loss-making compared with 47% of providers working in Family, and all NFP providers (the majority of these did Housing work) were loss-making compared with 64% of private providers.

Our findings demonstrate a substantial funding gap across both Housing and Family legal aid work. The sample of responses we have gathered indicates that on average, fee-earning staff are only able to recover between 48% and 94% of the full costs of providing legal aid, let alone generate a profit margin. This level of funding gap may only be closed if significant changes to fees and recoverable billable hours are introduced.

It is important to note that the information and analysis presented in this report is based on a sample of 45 civil legal aid providers across Housing and Family. While the data we have collected is very detailed and of high quality, it covers only a fraction of the sector (13-14% for Housing, 1-2% for Family). Similar, large scale data collection exercises in the future would be beneficial for confirming our results and developing a deeper understanding of the variation in performance across different areas of civil legal aid as well as within segments of the same areas of civil legal aid. Our work has demonstrated that it is possible to gather the required financial data from providers even though this has required significant effort and time. We expect that future data collections will be less burdensome and can be scaled with appropriate guidance, embedding the lessons learnt through this initial research.

6.2 Recommendations for future analysis

Providers were in general highly engaged and willing to participate in the research, and viewed the analysis as important for understanding the sustainability of civil legal aid. It is our view that this research could be replicated or expanded upon in the future, based on the level of engagement received and the data which providers were able to supply. This would support a robust understanding of the sustainability of different segments of civil legal aid, and how this sustainability changes over time, which is critical for informing policy decisions.

When pursuing any similar analysis of providers' financial information covering the revenues and costs associated with delivering civil legal aid, future researchers should consider the

following recommendations in order to ensure the analysis is as efficient and informative as possible.

- **Consider the use of a formal sampling approach.** It is important to acknowledge that the approach taken for this research in the context of compressed timelines may result in the selection of firms with stronger financial accounting practices, or those experiencing lower levels of profitability and therefore may be more likely to respond to calls for evidence. The application of a formal sampling approach, should timelines allow for this, or the mandating of responses, may ensure greater representativeness of the final sample.
- **Develop targeted data request templates for each area of civil legal aid.** While the overall analysis focuses on common factors across providers (in particular, revenues, staff costs, and wider overheads), templates should be adjusted to reflect differences across the various segments of civil legal aid. For example, Housing and Family legal aid each encompass different sub-segments which may differ in terms of profitability, as well as different types of information which may be required from providers. For instance, some revenue sources may be applicable to certain segments and not others, such as inter-partes revenues. Reflecting the differences across segments of legal aid in the templates can make the responses from providers more informative, as well as facilitate the completion of this information by providers.
- **Ensure the data requests are as simple as possible.** To avoid overwhelming providers, researchers should strive to make the data requests as simple as possible, and to request the minimum amount of information required for the analysis. This both reduces the burden on providers responding to the request, as well as increases the likelihood that the information provided by providers is accurate and robust.
- **Test data request templates with providers before deploying them to the field.** To support the development of targeted, simple data requests, researchers should test the data request templates with a sub-sample of providers before circulating this request to the wider response sample. This will help to ensure that the requests are clear and fit-for-purpose, as well as highlight information which providers may not be able to provide in the requested form.
- **Provide support for providers to complete the templates.** Even with a simplified, targeted data request template, experience from this exercise demonstrated the benefit of holding calls or otherwise engaging with providers to assist them with filling out the templates. While providers uniformly held most (or all) of the information requested in the templates we provided them, many were initially nervous about the level of input required. The calls we held with providers helped to assuage their concerns, and clarify what was being requested of them and how they might provide it. We recommend that this engagement takes two forms, both of which were deployed as part of this research: (i) a 30 – 60 minute call to talk through the template itself and assist with filling it out where necessary, and (ii) follow-ups once completed templates have been received to sense-check results and resolve any queries or discrepancies. The provision of guidance based on experiences from this research of the key issues raised by respondents may further

enable scalability of data collection in the future and reduce the extent of direct engagement required with providers for larger exercises.

- **Allow adequate time for responses.** An appropriate amount of time should be built in for providers to participate in the research and fill in the templates. Researchers should allow for sufficient lead time to contact prospective participants, and develop the templates, and several months for the fieldwork itself (depending on the number of providers engaged with, and number of responses sought). Providers should be given at least a month to respond to data requests to allow them to fill out the templates accurately, and researchers should allow for several weeks following the receipt of the templates for further follow-ups with providers where needed.

Once the templates were developed, obtaining each completed provider template took between one and three hours of researcher time per provider. This included contacting providers, scheduling interviews, talking providers through the templates, and following up as needed. As a result, any future researchers should allow for a minimum of three months per segment of civil legal aid included in the analysis, in order to ensure adequate time for engaging with an appropriate number of providers and obtaining responses.

7 Annex A: Data collection

The primary focus of our analysis was to identify the costs of applying for and maintaining a civil legal aid contract, and the associated profits (or losses) from this work.

Providers were asked to:

1. complete a template with financial information about their organisation, and
2. participate in a one-hour video interview to discuss their inputs and collect further qualitative information.

Data collection took place between December 2023 and January 2024 for the Housing phase of work, and between February 2024 and March 2024 for the Family phase of work.

7.1 Financial data

Quantitative information about the revenues and costs of administering legal aid services was collected using a template.

This template was designed to balance the need for consistency across providers with the requirement to remain reasonably flexible to different forms of legal aid practice and recording.

While we tried to limit the burden of the information request as much as possible, the template was still found to be challenging for some providers to complete alone. Conducting in-depth sessions to support the completion of returns was a key part of ensuring high data quality.

7.1.1 Housing

Firms were asked to provide key financial information relating to revenues, staff costs and overheads. Additional (optional) fields were available to gather insights where available on time recording of billable and non-billable activities, case types dealt with, capacity constraints and recruitment.

Figure 22 Housing providers: Firm revenues and costs

Total revenue			Private	Housing legal aid interpartes revenues	Housing legal aid LAA revenues	Other legal aid	Other funded work - contracts and grants (incl. local authorities, trusts and Foundations)				
FEE EARNERS											
	Equivalence to banding for Solicitors' guideline hourly rates	Number of employees, FTE equivalent	If estimates possible...				Notes	Salary	Bonus	Salary on- costs (incl. NI contributions, pensions, etc.)	
Example		5	% Private / other (if estimate possible)	% Housing legal aid (if estimate possible)	% Other legal aid (if estimate possible)	% Other funded work - contracts and grants (if estimate possible)		£ 21,000	£ 3,000	£ 4,800	
Paralegal	Band D		50%	25%	25%	0%					
Trainee solicitor / SQE	Band D										
Solicitors and legal executives (up to 4 years' experience)	Band C										
Solicitors and legal executives with over 4 years' experience	Band B										
Solicitors and legal executives with over 8 years' experience	Band A										
Partner	Band A										
Other staff											
		Number of employees, FTE equivalent	Total hours worked	If estimates possible...				Notes	Salary	Bonus	Salary on- costs (incl. NI contributions, pensions, etc.)
Example: Secretary to Partner		1	1,200	75%	10%	15%	0%	Where a Partner may spend 75% of their time on private work and 25% of their time on legal aid work, this may be reflected in the Secretary's working hour as well.	£ 21,000	£ 3,000	£ 4,800
Reception / telephone											
Secretaries											
Finance staff											
Costs staff / costs lawyer											
Other (not included in the above)											
(please amend/add more rows as necessary)											
Additional notes, if required											

Source: Frontier Economics

7.1.2 Family

A more streamlined template was constructed based on the learnings from the previous phase of work. This template was limited to the key financial information only, and aggregate information across the firm was required rather than information by grade of employee.

Additional fields were however included to reflect the breadth of work covered by Family legal aid services. Notably, it was considered helpful to separate the revenue and cost information relating to private law and public law Family legal aid, given that some firms were known to specialise in one of these two areas. Firms were able to indicate their caseloads associated with each with the addition of a summary table focused on Family legal aid work only.

It was also considered useful to separate the revenues and costs associated with cases remunerated by fixed fees and hourly rates, to be able to demonstrate any differences in profitability associated with these types of work.

Figure 23 Family providers: Legal aid work

OVERVIEW Family legal aid work			
Please record information for work relating to <i>Family legal aid only</i> .			
Please <i>exclude</i> any as yet unbilled work / work in progress.			
	Family legal aid		
	Number of cases taken on	% FTE time spent	Fees received
Family mediation			
Children private law			
Finance			
Divorce			
Domestic abuse			
Children public law			

Source: Frontier Economics

Figure 24 Family providers: Firm revenues and costs

OVERVIEW All work		Whole organisation							
Please record information for your whole organisation, including areas of work which do not relate to legal aid. Please exclude any as yet unbilled work / work in progress.		TOTAL STAFF EMPLOYED (FTE)	PRIVATE PAYING WORK All (Family and any other categories)	FAMILY LEGAL AID Private Family Legal Help and Family Help lower	FAMILY LEGAL AID Private Family Family Help Higher and Legal Representation	FAMILY LEGAL AID Public Family Legal Help and Family Help lower (CWT PL)	FAMILY LEGAL AID Public Family Family Help Higher and Legal Representation	FAMILY LEGAL AID Family Mediation	OTHER LEGAL AID Other controlled and certificated
Total number of fee-earning staff (FTE) <small>Please include any staff member in the legal team contributing to fee-earning work, including caseworkers and paralegals.</small>									
Total number of other staff (FTE) <small>Please include all other staff members, including administrative and management staff.</small>									
Please record information for your whole organisation, including areas of work which do not relate to legal aid. Please exclude any as yet unbilled work / work in progress.		TOTAL ANNUAL INCOMES / OUTGOINGS (£)	PRIVATE PAYING WORK All (Family and any other categories)	FAMILY LEGAL AID Private Family Legal Help and Family Help lower	FAMILY LEGAL AID Private Family Family Help Higher and Legal Representation	FAMILY LEGAL AID Public Family Legal Help and Family Help lower (CWT PL)	FAMILY LEGAL AID Public Family Family Help Higher and Legal Representation	FAMILY LEGAL AID Family Mediation	OTHER LEGAL AID Other controlled and certificated
Total revenue									
Total fee-earning staff cost (salary, bonuses, on-costs) <small>Please include any staff member in the legal team contributing to fee-earning work, including caseworkers and paralegals.</small>									
Total other staff cost (salary, bonuses, on-costs) <small>Please include all other staff members, including administrative and management staff.</small>									
Total overheads									
Additional notes, if required									

Source: Frontier Economics

7.2 Qualitative data

Qualitative interviews were conducted with all participating legal aid providers to complement the quantitative data collection.

The first part of the interviews focussed on reviewing the data template that providers had been sent, to discuss any queries, and to ensure a consistency of approach in completing the template across providers. This was an important aspect of the data collection process.

The second part of the interview consisted of an in-depth qualitative discussion to explore the provider’s experiences in delivering legal aid in greater detail. This enabled the capture of any background and context-specific information, and provided insight into key themes such as administrative process, capacity constraints and unmet demand, recruitment and retention.

8 Annex B: Apportionment of costs for Housing legal aid

A key feature of Housing legal aid cases is the ability to claim inter-partes cost orders when a positive outcome is secured in court. In these cases, legal costs may be claimed from the opponent at commercial rates, which are significantly higher than legal aid fees obtained from the LAA.

Given that inter-partes fees are claimed from the opponent and not the LAA, failing to exclude these from the analysis would bias the profitability assessment of legal aid work. To avoid that, an adjustment must be made in order to assess the profitability of legal aid work at LAA fee rates separately to the profitability of legal aid work at inter-partes fee rates.

8.1 Worked example

The following example illustrates the approach taken to adjust the reported Housing legal aid revenues and costs in order to ensure an accurate assessment of profitability.

Table 1 Reapportionment of legal aid revenues and costs (stylised example)

	Housing legal aid Costs recovered from LAA	Housing legal aid Costs recovered from opponent	
Reported revenues	£25	£100	(i)
<i>Implied proportional split</i>	20%	80%	(ii)
Reported costs		£50	(iii)
Ratio of inter-partes income to LAA income per case – average over last 3 years (1)		3.71	(iv)
Reported revenues, rescaled based on LAA fee rates³⁶	£25	$£100 / 3.71 = £27$	(v)
<i>Implied proportional split</i>	48%	52%	(vi)
Adjusted costs	$£50 * 48% = £24$	$£50 * 52% = £26$	(vii)
Profitability of legal aid work	$£25 - £24 = £1$	$£100 - £26 = £74$	(viii) = (i) – (vii)

Source: Frontier Economics

³⁶ These are the estimated revenues that would be achieved if inter-partes cases were remunerated based on LAA funding rates rather than commercial rates.

Note: (1) Frontier Economics, based on analysis of Legal aid statistics, July – September 2023, Ministry of Justice / Legal Aid Agency

Providers were asked to report their legal aid incomes achieved under LAA fee rates and inter-partes fee rates separately (i). The costs associated with completing the legal aid work in each case however could not be easily separated by providers (iii).

Using the implied proportional split based on the reported revenues to separate the costs would incorrectly skew the workload in favour of the inter-partes cases, given the relatively higher fee rates achieved for this work (ii).

Therefore, the inter-partes revenues are first scaled down to reflect equivalent remuneration rates as the cases which achieved LAA revenues. An apportionment of costs can then be made on the basis of comparable revenues.

- A scaling factor was obtained using historic information from the LAA on average remuneration rates per case. The ratio of the average remuneration rate per case where the cost was met by the LAA was taken against the average remuneration rate per case where the cost was met by the opponent. Over the last three years (Q3 2021/22 – Q3 2023/24), cases where costs were met by opponents achieved incomes 3.71 times greater than cases where costs were met by the LAA (iv).
- This scaling factor was then used to rescale the inter-partes revenues as described (v). The revised rates reflect the amount the provider would have received if the case had been remunerated based on LAA fee rates instead of inter-partes fee rates.
- The implied proportional split between the adjusted revenues (vi) is then applied to the costs in order to separate them accordingly.

A profitability assessment can finally be made based on the reported revenues and adjusted costs, to identify the returns to be made when firms are remunerated based on the differing fee rates (viii).



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