

APPENDIX

Additional Comments Provided in Response to ILPA’s Survey for Immigration & Asylum Practitioners on Legal Aid Sustainability

We invited comments on the viability of providing legal aid services in immigration and asylum, and have identified the following themes arising from the responses.

<u>Theme</u>	<u>Quotation</u>	<u>Respondent¹</u>
Excessive Administrative Burden and Unpaid Costs	<i>“The LAA has overseen such a complicated reporting system that many unpaid hours are spent getting cases paid. The codes need to be streamlined rather than continually added and expanded. We spent much time and expense in resubmitting files that have wrongly been rejected for payment as the LAA doesn’t understand their own rules or lacks the flexibility or common sense when dealing with rules that are unclear. Added to this is the overall frustration with the Home Office and court system in getting anything done.”</i>	Current Provider: London, not for profit organisation
	<i>“If there are no other changes to legal aid practice in immigration and the current levels of administration and auditing remain the same or increase, then hourly rates would need to factor in that large overhead for a practice to be viable. If there were other important and vital changes that would reduce administration and increase cash flow earlier on a file, then perhaps overhead could reduce and fees be viable at a lower rate.</i> ...	Current Provider: London and Yorkshire, not for profit organisation

¹ Respondents were asked if they were a(n) a) Organisation that provides immigration and asylum legal aid services, b) Organisation that could, but does not, provide immigration and asylum legal aid services, c) Self-employed barrister, d) Other practitioner (including a practitioner not responding on behalf of an organisation). Those who answered (a) are referred to as ‘Current Providers’; those who answered (b) are referred to as ‘Potential Providers’; those who answered (c) are referred to as ‘Barrister’; and those who answered (d) are referred to as ‘Other Practitioner’.

All respondents were asked where they are based. Current and potential providers were asked whether their organisation was a not for profit organisation, private firm, chambers, or other. Other practitioners were asked whether they are a barrister, pupil barrister, caseworker/trainee solicitor/paralegal, CILEx, OISC Adviser, or Solicitor. These answers inform the information in the respondents column.

<p><i>High administrative and auditing burdens carried by practices with immigration departments make this work unviable. Immigration files are subject to the highest margin for error because of the complexity in running them as there are so many variations in fees, codes, bolt ons, funding limits, VAT status, the combination of legal help and CLR stages. For example, immigration providers use interpreters in most cases. The LAA's requirements for interpreter qualifications, what information must be on an invoice, in relation to minimum charges, and low translation fees and no special rate permitted for telephone interpreting make it burdensome to find interpreters, manage interpreter payments and then ensure all of those are in order for billing. Another example, we pay for a billing coordinator one day a week for our small practice and her fees come out of our controlled work income. Immigration billing is the most difficult in all our legal aid work."</i></p>	
<p><i>"It is an exhausting daily struggle and not helped in any way by LAA admin, audits and disallowing costs."</i></p>	<p>Current Provider: South East England, private firm</p>
<p><i>"Significant costs are incurred to just be permitted to do legal aid work (accreditation etc) and the LAA cut bills wherever they can. Billing is a nightmare."</i></p>	<p>Current Provider: West Midlands, private firm</p>
<p><i>"There are bureaucratic burdens which could be reduced in order to improve viability."</i></p>	<p>Current Provider: Yorkshire and the Humber, not for profit organisation</p>
<p><i>"Additional cost allowance should be made for the cost of administering the LA contract, cost of billing"</i></p>	<p>Potential Provider: Yorkshire and the Humber, not for profit organisation</p>
<p><i>"Based on my previous experience of working in a practice providing legal aid services I would not find providing legal aid viable because of ... 2) Complexity of making Legal Aid funding applications e.g. for witnesses and difficulty dealing with LAA decision makers. Costs of resources to make such applications 3) Inconvenience and cost of dealing with Legal Aid Agency managers - two previous firms who provided good services were put under review because of minor claims discrepancies resulting in significant management time being spent each month."</i></p>	<p>Potential Provider: Yorkshire and the Humber, private firm</p>

	<i>"The real issue is that we are only paid for the time actually spent with clients. So there is no time to study or draft unless we do that at night. I am quitting and moving to other field of law as I need a life. It is not sustainable to work 90 hours a week at such low salaries"</i>	Other Practitioner: Solicitor, Scotland
Capacity, particularly for Additional Work	<i>"Capacity is already significantly stretched with the additional work being insisted upon by the Home Office with ACQs, insistence on providing detailed witness statements on top of the already substantial delays in asylum processing. Even with an increase in funding (which is urgently required) capacity remains a huge problem."</i>	Current Provider: North West England, not for profit organisation
	<i>"We do not have the cash reserves to expand and we are turning away between 5 – 10 cases per week we could take on because we lack capacity."</i>	Current Provider: London, not for profit organisation
	<i>"The increased complexity of work brought about by policy and legal change in order to properly represent an individual makes it more and more unattractive to run certain cases, as we have seen from the number of survivors in the NRM who cannot find lawyers who have cases involving multiple legal processes, applications, trauma and often significant delay."</i>	Current Provider: London and Yorkshire, not for profit organisation
	<i>"Updates to fees for changes to work need to be applied promptly. E.g. the additional work required by the Asylum Questionnaires is not factored into the current fixed fee."</i>	Current Provider: South West England and Wales, not for profit organisation
	<i>"Our firm can only continue to do any legal aid because we have drastically increased the quantity of private work. This in turn has further reduced our capacity for legal aid work, and despite being longstanding legal aid providers, if our practitioners start to do less and less legal aid, we run the risk of losing our expertise in this highly specialised and complex area of law."</i>	Other Practitioner: Solicitor, London
Retention and Recruitment	<i>"Real sustainability will only be achieved if there are new entrants to the sector and if the experience and efficiency of senior practitioners is valued effectively"</i>	Current Provider: London, not for profit organisation

<p><i>“Although we have a very loyal and committed immigration team, there is no one to replace them. Our restricted pay scales, the overlapping and conflicting regulation, bureaucratic and Kafkaesque systems of the LAA make it difficult to attract new staff. The operation and conflict between regulators SRA and OISC make it difficult and costly to train new staff to take part in immigration legal aid work...We do attract very talented interns who do a six-month placement in our offices. They are extremely impressed by our work, but they also see the amount of hard work, stress and battle that is needed to get our clients’ cases completed and paid. They express the opinion that although they want to work in immigration they don’t want to work in legal aid.... on one occasion we received no application to fill a full-time IAAS-qualified caseworker role.”</i></p>	<p>Current Provider: London, not for profit organisation</p>
<p><i>“It is very very difficult to recruit lawyers with experience and offer conditions that will support and retain them in order to offer and grow a quality service. It is almost impossible to recruit in the north of England. If we do not have staff we can retain, we cannot take on the risk of opening a lot of files, and we cannot earn income that will be realised in a few years to sustain the service. We will not have sufficiently experienced lawyers in the sector to train new lawyers and supervise their work.”</i></p>	<p>Current Provider: London and Yorkshire, not for profit organisation</p>
<p><i>“We are endlessly struggling now to cover basic expenses, including salaries and to attract and retain staff. We have been without an office manager for a year as we cannot afford a competitive salary.”</i></p>	<p>Current Provider: South East England, private firm</p>
<p><i>“Firms cannot recruit and retain caseworkers (nor afford support staff) as the rates mean salaries for caseworkers (and thus for support staff) are low...On current rates, little profit can be made - so there is no incentive to recruit new caseworkers (at significant expense) to become the next tranche of legal aid lawyers.”</i></p>	<p>Current Provider: West Midlands, private firm</p>
<p><i>“It is impossible for us to recruit and retain staff on low salaries. We cannot afford to pay decent salaries due to the extremely low level of remuneration for publicly funded immigration and asylum work. Our organisation has shrunk from 5 solicitors to 1 and in our last 3 recruitment rounds we have been unable to recruit either an immigration solicitor or caseworker.”</i></p>	<p>Current Provider: London, not for profit organisation</p>
<p><i>“If the rates are not increased people will have to leave the profession.”</i></p>	<p>Other Practitioner: Solicitor, London</p>

Cash Flow	<i>“money is not released regularly by the LAA as it could be, to make work more attractive and sustain practices throughout the year. If money was released as it is for certificates, with payments on account, this would give firms greater cash flow on a regular basis. The options available for stage claiming profit costs at present are not sufficient.”</i>	Current Provider: London and Yorkshire, not for profit organisation
	<i>“The turn around must be much quicker with decisions at initial stages to be profitable.”</i>	Current Provider: Yorkshire and the Humber, private firm
	<i>“We would be happy to look at increasing services to meet need, but the model of payment in arrears means this would require capital investment of at least £50k per caseworker - as a charity we are not in a position to raise that capital, so there needs to be some consideration of funding charities up front or amending the model (e.g. to the original 'not-for-profit' model developed in the 1990s)”</i>	Current Provider: Yorkshire and the Humber, not for profit organisation
	<i>“Additional cost allowance should be made for...the cash flow implications for satisfaction of the matter start.”</i>	Potential Provider: Yorkshire and the Humber, not for profit organisation
	<i>“Based on my previous experience of working in a practice providing legal aid services I would not find providing legal aid viable because of 1) Impact on cash flow and risks to business viability due to length of time before payment received and requirement to pay disbursements prior to receipt of Legal Aid settlement.”</i>	Potential Provider: Yorkshire and the Humber, private firm
	<i>“models would need to take into account the fact that many asylum cases are now taking more than 6 months”</i>	Potential Provider: Yorkshire and the Humber, not for profit organisation
Problems with Fixed Fees	<i>“For fixed fees, if we request a minimum percentage increase and it is granted, this is likely to make it harder to reach the escape threshold. If fixed fees have to exist, we would rather see more achievable and lower thresholds for all, to encourage people to do the extra work to reach them.”</i>	Current Provider: London and Yorkshire, not for profit organisation

	<i>"The fixed fee needs to be increased immediately when changes occur (or a new bolt on fee created). If the LAA are unable to do this, then the whole payment scheme should be on an hourly rates basis."</i>	Current Provider: South West England and Wales, not for profit organisation
	<i>"Based on my previous experience of working in a practice providing legal aid services I would not find providing legal aid viable because of ...4) Feeling that only inadequate services could be provided if time restricted to the fixed fee set."</i>	Potential Provider: Yorkshire and the Humber, private firm
	<i>"The fixed fee regime, even at a 2x escape level, brings with it too much risk and too much unnecessary and bureaucracy as well as militating against good quality work. ... For us the fixed fee regime would make it unviable."</i>	Potential Provider: London, not for profit organisation
Subsidisation	<i>"We rely on grant funding to supplement our legal aid casework. Legal aid funding comes with huge risks and cannot cover all of the real costs of running a practice, looking after our staff and doing quality work for clients."</i>	Current Provider: London and Yorkshire, not for profit organisation
	<i>"Currently we have other funding which subsidises legal aid and legal aid requires more support from management and admin than any other funder."</i>	Current Provider: South West England, not for profit organisation
	<i>"we are a not for profit so we supplement legal aid immigration work with grant funding- however, we should not have to do that. Grant income is unstable and is short term funding that does not allow us sustainably financially plan."</i>	Current Provider: London, not for profit organisation
	<i>"I think fixed fees should be scrapped and everything should return to hourly rates with an increased hourly rate. Increasing the fixed fee will only make it harder to go escape for those that do good work and will only incentivise those who undercut the fixed fee."</i>	Potential Provider: Yorkshire and the Humber, not for profit organisation
	<i>"My practice at present is approximately 60% legally aided. I meet the extreme shortfall in part by increasing my private rates for low/medium income clients who are no eligible for legal aid but are not able to pay anything approaching my commercial rate. With inflation in the last 1 1/2 years this has ceased to be a viable model and I am going to have to reduce my legally aided work significantly in order to remain viable. Like many practitioners, I rely (in order for my practice to be</i>	Barrister: East Midlands and London

	<p><i>commercially viable) on cross-subsidising legally-aided work; this particularly includes cross-subsidisation from inter partes awards in successful certificated claims. This is an unreliable way of cross-subsidising; will become even less so if graduated fees are extended in civil claims; and in any event is reducing my capacity to do legally aided CLR work.”</i></p>	
	<p><i>“Our firm can only continue to do any legal aid because we have drastically increased the quantity of private work. This in turn has further reduced our capacity for legal aid work, and despite being longstanding legal aid providers, if our practitioners start to do less and less legal aid, we run the risk of losing our expertise in this highly specialised and complex area of law.”</i></p>	<p>Other Practitioner: Solicitor, London</p>
	<p><i>“The remuneration rates are far too low to support a practice that is not cross-subsidised either by profitable private work or grant funding”</i></p>	<p>Other Practitioner: Solicitor, South East England</p>