



Ministry of Justice – Civil Legal Aid: Towards a Sustainable Future

A response by
The Chartered Institute of Legal Executives
(CILEX)

March 2025

Introduction

- 0.1. CILEX would like to take the opportunity to respond to the MOJs consultation in relation to changes to the rates of pay in Housing & Debt and Immigration & Asylum legal aid. CILEX represents a substantial number of members working in both housing and immigration who undertake legal aid work.
- 0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
- 0.3. CILEX represents over 17,500 members of which 77% of the membership are female, 16% of members are from an ethnic minority background, 4% are LGBT and 6% have a disability. Additionally, in terms of social mobility, 78% of CILEX members attended a state-run or state-funded school and 50% have an undergraduate university degree (of which 68% of those members were the first to attend university).
- 0.4. Following the Review of Civil Legal Aid (RoCLA), CILEX welcomes the MOJ's further work in relation to reforming civil legal aid across the sector. As part of this consultation response, CILEX surveyed members working in civil legal aid, including members working in both housing and immigration. CILEX has therefore only responded to questions where there is sufficient evidential data and member experience.

1. Question 1: Do you agree with our principles for setting fee levels within civil legal aid?

- 1.1. As noted in CILEX's response to the RoCLA, CILEX hoped that when the MOJ reviewed the next stages in relation to civil legal aid, considerations of the impact on all parties where civil legal aid is available would take place. This includes parties to proceedings, the profession and practitioners, and on the wider society. CILEX feels positively that based on the principles as set out below, this has taken place.
- 1.2. **Principle 1: Ensure a sustainable housing and immigration legal aid market by remunerating at a rate which allows providers to attract and retain legal aid professionals and enables providers to innovate and try different delivery models.** CILEX members noted this principle as the most effective out of all 4, noting the transferrable benefits across all parties to civil legal aid. CILEX hopes that the MOJ will be more transparent in their perception of a remuneration rate that allows providers to attract and retain legal aid professionals, whilst also enabling providers to innovate and try different delivery models. Whilst CILEX strongly supports innovation, CILEX is aware that the current legal aid market has

meant that ‘learning new methods was a lesser priority than chargeable work’¹. Overall, CILEX hopes that the MOJ will publish their calculations of a sufficient remuneration rate that complements retention and innovation alongside chargeable work in the legal sector.

- 1.3. **Principle 2: Ensure high quality provision is available to those who are eligible and encourage early resolution where appropriate.** CILEX is aware that following the case of *R(on the application of Detention Action) v Lord Chancellor*², ensuring high quality provisions is vital in immigration cases, specifically where there are Detained Duty Advice Schemes (DDAS). CILEX notes that due to the significant limitations of civil legal aid in immigration and asylum cases, the DDAS ‘in its current operation poses a high risk of interference with the right of access to justice’³. In its current form, CILEX understands that without adequate reforms, individuals facing immigration and/or asylum legal action are being detained for prolonged periods of time, often receiving advice from poor quality providers who are not suitably remunerated. CILEX hopes that the MOJ will provide examples and evidence the implementation of this principle in practice, to promote prompt resolution for those already undergoing mentally and physically traumatic experiences.
- 1.4. **Principle 3: Reduce the number of different rates being paid, paving the way for future simplification of the fee schemes which will make it easier for the LAA to maintain their digital systems and reduce complexity of submitting claims for providers. This is intended to streamline and accelerate the processing and payment of bills.** CILEX supports the introduction of consistent rates across civil legal aid work where it is appropriate and reasonable. CILEX recognises that simpler processes for overheads will in turn have downstream benefits in promoting consistent projections for law firms undertaking legal aid work. CILEX moreover believes that in creating a simpler process for all will increase those willing to undertake legal aid work. CILEX hopes that a consistent use of rates for the purposes of fee schemes will assist the MOJ in collecting and analysing data for future rate increases.
- 1.5. **Principle 4: Pay a fair price to incentivise efficient delivery models whilst delivering value for money for the taxpayer.** CILEX agrees in principle that a fair price should be paid to incentivise efficient delivery models, especially noting delivering value for money for the taxpayer. CILEX is interested to see how the MOJ perceives ‘a fair price’ to be in the context of civil legal aid. CILEX recommends that civil legal aid fees should be index-linked to inflation (CPI) preventing a disparity between actual rates and a real-term rate.

¹ Legatics, ‘Barriers to Legal Technology Adoption’ (2021 Legatics) p5.

² [2022] EWHC 18.

³ Ibid, 6.

2. Question 2: Do you agree that we should increase the fees paid for Housing and Immigration work?

- 2.1. CILEX strongly agrees that there should be an increase in the fees paid for both housing and immigration work and appreciates that work is being done to resolve the current civil legal aid crisis.
- 2.2. CILEX is aware that non-family legal aid work (inclusive of both immigration and housing) has increased by 2% over the last quarter⁴. For housing specifically, CILEX notes the dramatic increase in workload following impending legislative changes. In the same quarter, housing work increased by 10%, whereas expenditure has only increased by 2%⁵. CILEX is concerned that there are a substantial number of individuals without access to justice due to the financial limitations in civil legal aid. By increasing the fees paid for housing work, CILEX hopes that more support can be provided to practitioners working in civil legal aid to best broaden the scope of those willing to take on legal aid work, as well as opening access to justice for all.
- 2.3. CILEX understands that the introduction of Renters Rights is projected to reduce the volume of court possession hearings, but housing legal aid and Housing Loss Prevention Advice Service (HLPAS) demand will increase due to the section 21 abolition. CILEX hopes that the MOJ will publish evidential data to support these findings, so all parties to legal aid can receive sufficient support.
- 2.4. For immigration legal aid, CILEX agrees that it is imperative that there are enough practitioners in areas where there are current legal aid deserts, and where there is a higher density of the population likely to require immigration advice. CILEX endorses that creating a sustainable and financially viable profit margins to prevent injustices, will in turn help relieve pressures that the Courts and DDAS services are currently facing.
- 2.5. CILEX however notes that practitioners working in immigration legal aid also face other challenges that are not directly linked to their rate of fees. CILEX members who are from an ethnic minority are more prevalent in certain practice areas, with 71% of members working in immigration and asylum law are from an ethnic minority. CILEX wishes to emphasise the importance on the Ministry of Justice on ensuring that further civil legal aid provisions and policies consider the diversity of practitioners to support the sector further.

3. Question 3: Do you agree that fees for housing and immigration work should be increased to a minimum hourly rate of £65.35/£69.30 (non-London/London)?

- 3.1. CILEX recognises that in light of the current budgetary restraints in the sector, this uplift is monumental. However, CILEX does not believe it is enough, with 100% of members noting that the uplift was insufficient to sustain the legal aid market.

⁴ Legal aid statistics quarterly: July to September 2024.

⁵ Ibid.

- 3.2. One member noted *'the increase in fees is very welcome, but does not go far enough to attract new lawyers to the profession, nor does it maintain or increase services'*. Another stated that *'the main issue is that the proposed changes do not go far enough to fix the current crisis'*.
- 3.3. CILEX welcomes the methodology of the assumptions made as outlined in the report. CILEX hopes that review of the methodology will assist various stakeholders and parties to civil legal aid to have confidence in the proposed uplift in fees.

4. Question 4: Do you agree that the minimum hourly rates for Controlled and Licensed work should be the same?

- 4.1. CILEX cautiously agrees that the minimum hourly rates for Controlled and Licensed work should be the same. CILEX overall supports simplifying processes to reduce the administrative time and costs on the premise of providing greater access to legal aid and better support for practitioners in resolving disputes earlier.
- 4.2. However, CILEX believes that there are several considerations that need to be considered before the fees are made the same. CILEX members noted the following considerations:
- Complexity of the work
 - Level of expertise/experience required
 - Administrative differences
- 4.3. CILEX appreciates that Licensed work requires more advanced experience and administrative resources, due to the difference in courts. CILEX therefore hopes that the MOJ will publish their findings and calculations to support those working in both Controlled and Licensed work respectively, and how the increase in fees can complement the differences in work.

5. Question 5: Do you agree that our proposed rates will enable legal aid providers to undertake increased volumes of legal aid work?

- 5.1. When asking CILEX members whether they believed that the proposed rates will enable legal aid providers to undertake increased volumes of legal aid work, 25% noted 'somewhat' and majority 75% stated 'no'.
- 5.2. CILEX asked members what factors they believed would encourage providers to undertake more legal aid work in their sector (being either housing or immigration). Members identified the following:
- Increasing hourly rates (more so than currently proposed)
 - Acknowledgement of administrative burdens

- Availability of providers
- 5.3. Acknowledging that the proposed rates are insufficient, CILEX believes it is important to recognise that the fees are not the only barrier in encouraging legal aid providers to undertake more legal aid work. CILEX understands that availability of providers is an ongoing issue across the UK. It is undeniable that for immigration and asylum cases, across England and Wales, 63% of the population do not have access to an immigration and asylum legal aid provider⁶. Even where there is access to a provider, in immigration cases, it is highly likely that clients will face language barriers, which incurs additional cost for interpreters or relies on more flexibility for a family member or friend to translate for them, which can raise other safeguarding concerns. CILEX understands that for housing, the five best served local authorities have 1.74 providers per 1,000 individuals⁷.
 - 5.4. Without available providers, recruitment of young aspiring legal aid professionals is unable to take place effectively, meaning that the pool of legal aid providers is becoming smaller and smaller without emerging talent in the sector.
 - 5.5. Furthermore, the administrative burdens associated with legal aid practices are not being acknowledged by government. CILEX is aware that *'demanding regulations and time-consuming bureaucratic procedures pose significant obstacles that discourage legal professionals'*⁸. Administrative burdens are preventing legal providers from achieving profitable and viable chargeable billing hours, meaning that even with the uplift in rates, financial targets cannot be met.

6. Question 6: Do you agree that increased to immigration should be implemented first?

- 6.1. CILEX recognises the current pressures being felt within each area of law and the extent of uplift required. CILEX believes that this decision should be made by the Legal Aid Agency (LAA) based on the substantial knowledge and understanding of the current legal aid crisis in both Housing and Immigration law.

7. Question 7: Do you agree with simplifying the fee system by harmonising the fees identified?

- 7.1. CILEX supports simplification of the fee system, recognising that this proposal will relieve some of the administrative burden that practitioners face.
- 7.2. CILEX agrees with harmonising all London 'routine letters out and telephone calls' at the highest rate of £5.35. Whilst concerns surrounding risk of underpayment are appreciated, CILEX recognises that the majority of cases would benefit from simplifying the fee system through harmonising fees in relation to 'routine letters out and telephone calls' exclusively. Overall CILEX believes that harmonising these

⁶ The Law Society, 'Immigration and asylum – legal aid deserts', [Immigration and asylum – legal aid deserts | The Law Society](#).

⁷ LexisNexis, 'Housing legal aid deserts', [The LexisNexis Legal Aid Deserts report](#).

⁸ Seraphus, 'Stranded in legal aid deserts: The crisis in UK asylum and immigration representation', [Stranded in legal aid deserts: The crisis in UK asylum and immigration representation - Seraphus](#).

fees specifically will improve administrative efficiency and ensure that there is fairness and consistency across the sector.

- 7.3. However, CILEX disagrees that harmonising 'travelling and waiting time' and 'attendance at court, conference or tribunal with Counsel' has the same benefit. Due to external factors such as regional disparities and institutional delays, CILEX believes that these specific events should not be measured the same way.

8. Question 7a: Feedback on harmonising 'travelling and waiting time' and 'attendance at court, conference or tribunal with Counsel' at 50% of the hourly rate for 'preparation and attendance' in immigration and housing

- 8.1. CILEX understands the need for simplification and agrees that minimising the current recordable tasks will relieve administrative burdens. However, CILEX believes that practically, this harmonisation is not suitable due to the complexity of the case, as well as the fact that often (albeit there are exceptions) no work is being done whilst travelling and waiting in comparison to attendance at conferences, tribunals or court.

9. Question 9: Should we remove or reduce limits to the number of Controlled work matters where the client does not attend the provider's office to make an application for Controlled work?

- 9.1. CILEX believes that the limits to the number of Controlled work matters where the client does not attend the provider's office should be removed entirely. CILEX believes that practitioners can use their professional judgement based on their experience and client needs to provide remote or in-person advice flexibly.
- 9.2. CILEX believes that the increase from 50% to 75%, as increased in August 2024, has assisted legal aid professionals in both housing and immigration to a marginal extent. CILEX has received feedback that the increase has made clients feel well supported, and professionals can work more efficiently to cater to their client needs. CILEX believes that removing the limit entirely, with suitable safeguards, is the most appropriate solution.

10. Question 9a: Thinking about the limit on Controlled work applications that can be delivered remotely, in what way does this affect your ability to deliver face-to-face and remote advice, based on client need?

- 10.1. When asking CILEX members whether the current limit on Controlled work applications that can be carried out remotely impact their ability to deliver face-to-face and remote advice, based on client need, 50% of members noted that yes, it can create problems. 25% stated that it does not impact them directly, but they can see how it could create problems for others, and 25% stated that it did not impact their ability to deliver services.
- 10.2. Some of the factors that were noted as impacting the ability to accommodate client's needs were as follows:

- Geographical considerations mean that it would not be fair or reasonable for a client to attend in person for advice
- Client personal circumstances that are not directly protected by the Equality Act 2010, including caring responsibilities and financial limitations.
- Statutory limitations or other time constraints make it impractical.
- Not being able to use professional judgement.

11. Question 10: RoCLA evidence included feedback that providers are best placed to determine when clients need face to face advice, and where remote advice is appropriate. However, there is a risk that providers may move towards remote advice provision in a way that leaves clients who need face-to-face with difficulty finding a provider. When ensuring greater flexibility to provide remote advice, what measures or safeguards would help ensure that clients are not turned down or de-prioritised, because they require face-to-face?

- 11.1. CILEX supports the view that suitable safeguards need to be implemented to ensure that clients who prefer or require face-to-face advice, can receive it.
- 11.2. CILEX recommends the introduction of a client needs assessment at the point of onboarding a client to determine whether the individual requires face-to-face or remote appointments. CILEX notes that practitioners are already undergoing relevant regulatory checks at the point of onboarding clients, and do not believe that this would add significant administrative burden.
- 11.3. CILEX notes that with the assistance of guidance from the MOJ, criteria can be inputted into case management systems to reduce the time spent on administrative tasks. As an example, once the relevant filters are applied, the case management system can alert practitioners as to whether the client requires any reasonable adjustments such as in person or remote advice. This can also populate produce relevant forms or precedent letters as many case management systems already do in various areas of law.
- 11.4. Moreover, CILEX encourages the MOJ to consider how the enforcement of face-to-face appointments may impact those from lower socio-economic backgrounds. Due to the lack of available free or subsidised public transport, it can cause great difficulty for those earning lower incomes to travel into office premises, which in turn negatively detracts clients further in already challenging circumstances.

12. Question 12: Would you want the contractual requirement for permanent office locations to be reduced or removed?

- 12.1. When asking CILEX members whether the contractual requirement for permanent office locations should be reduced or removed, a majority of members agreed with the MOJ's position that it should be removed entirely.

- 12.2. Several members agreed with the caveat that the requirement should only be removed where the provider is able to continue to provide in-person services at suitable premises. CILEX believes that with the relevant safeguards as outlined above, providers can suitably meet the needs of clients who do require face-to-face advice. CILEX hopes that a detailed review of the legal aid deserts across the UK can assist when considering suitable locations.

13. Conclusion

- 13.1. Overall, CILEX welcomes the work being done by MOJ in the legal aid sector. CILEX believes that the simplification of fee structures will benefit those facing severe administrative burdens and will relieve substantial pressures practitioners face in both housing and immigration legal aid. However, CILEX believes that the proposed uplift is not enough to encourage providers to take up legal aid work and does not address the other issues that may be discouraging professionals from undertaking legal aid work.