



access
social care

Community Care Legal Career Pathways

Research Report April 2022

Funded by



The
Legal
Education
Foundation

Karen Ashton, Lainey Gough, Vicky Ling and Emily Sherratt

Contents

EXECUTIVE SUMMARY	3
Key findings.....	3
Why this project is needed	5
COMMUNITY CARE LEGAL CAREER PATHWAYS REPORT	6
What we did	7
Problems with social care – huge demand, restricted budgets	9
Need for advice	10
Community Care advice deserts	12
New Legal Help matter starts.....	14
REASONS FOR LACK OF SUPPLY	17
How Legal Aid really works in Community Care	17
The implications of Community Care casework being a public law discipline	20
Supervisor Requirements.....	24
Experienced lawyers leave Community Care	26
Rates of pay	26
Lack of specialist subject knowledge at the LAA.....	27
Burnout	28
Barriers facing the next generation of Community Care practitioners	28
Key barrier issues	30
Recommendations	31
CONCLUSIONS, SUGGESTIONS FOR CHANGE AND FURTHER RESEARCH ..	35
Conclusions	35
Appendix 1 – The team.....	37
Appendix 2 – Standard Civil Contract 2018 – Category definitions.....	37
Appendix 3 – Investigative representation	38
Appendix 4 - Online survey of practitioners – questions and responses	39
Summary of responses	41
Appendix 5 - One to one interviews with practitioners	43
One-to-one interviews with practitioners – responses.....	44
Appendix 6 - Online undergraduate law student survey and roundtable discussion notes	48
Appendix 7 - Practitioner discussion on why people leave Community Care.....	51

EXECUTIVE SUMMARY

Introduction

This scoping study aims to contribute to the development of a clear understanding and sector-wide agreement in relation to challenges affecting Community Care law as an area of legal practice. The methodology we used is [explained below](#). The research team at Access Social Care would like to thank all those Community Care law practitioners and students who responded to our surveys and engaged in interviews and further discussion, as well as the Law Society, the Legal Aid Practitioners Group (LAPG) and Young Legal Aid Lawyers (YLAL) for their invaluable support and insights.

Key findings

The current crisis in Community Care legal aid practice has significant implications for careers in this field.

Community Care is the area of legal aid practice which provides specialist legal advice for adults and children with disabilities on their rights to care and support when they cannot afford to pay for that advice themselves.

Reductions in some areas of legal aid practice were predicted where case types were removed from the scope of the legal aid scheme as a result of the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) from 1 April 2013. But no changes were made to the scope of Community Care. This reflected the Government's objective to target legal aid to those who needed it most,¹ and its recognition of the "typical vulnerability of clients involved in these cases".² Despite this, there has been a 77% reduction in the number of Community Care cases taken on under Legal Help in the last 10 years.³ This has not been the experience in other areas of law which also remained in scope. See [Legal Help matter starts](#) below.

This catastrophic decline in Legal Help matter starts cannot be accounted for by a reduction in the need for specialist Community Care legal advice. (See [Need for Advice](#), below.)

¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum October 2017 Cm9486 Para 13 p6.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf?msclkid=34f89b6ca8f71

² Reform of Legal Aid in England and Wales: Government Response June 2011 Cm8072 para 24 at p 89 [Legal Aid Reform in England and Wales: the Government Response Cm 8072 \(publishing.service.gov.uk\)](#)

³ Legal Help is the first stage of civil legal aid funding which covers pre-litigation advice. It is the most poorly remunerated area of legal aid work.

The explanation must lie elsewhere.

Practitioners routinely have to restrict the number and type of new Legal Help cases they take on or jeopardise the financial viability of their practice.

Practitioners overwhelmingly told us that they find it difficult to run a financially sustainable practice in Community Care on legal aid funding. The clear evidence from project participants is that the reduction in Legal Help matter starts is directly related to the strategies that providers have adopted in response.

Limiting the type and amount of legal aid work they do, referred to by many as 'achieving a balanced caseload', is a way to maintain at least a level of service rather than withdrawing from legal aid altogether.

This balance is achieved by taking on a greater proportion of Community Care case types with better rates of legal aid pay, such as Court of Protection work (which often bypasses the Legal Help stage), a proportion of privately paying work and grant-funded project work in the not-for-profit sector. This is a response to ensure financial viability; the demand for advice and representation from those who are eligible for legal aid across the whole range of Community Care work is still there and will increase. See [Need for Advice](#) below.

The consequential narrowing of the scope of the work undertaken under legal aid Community Care contracts not only impacts on the extent to which Community Care practice is meeting legal advice need, but also on the opportunities to gain experience in Community Care practice. Court of Protection practice offers only limited opportunities to undertake some aspects of Community Care work; private work is limited because of the link between disability and poverty; and project work does not often offer casework practice experience.

Across the sector, there are significant difficulties with recruitment and retention of staff.

One project participant from a very well-respected practice recounted that recent recruitment had attracted no one with any solid Community Care experience. A second recalled that they had had no applicants at all to a recent advertisement. Project participants identified a number of contributory factors:

- Awareness of Community Care as an area of specialisation is low, which is consistent with our findings about the limited opportunities for students to develop that awareness.
- Legal aid practice generally is poorly remunerated. Younger practitioners increasingly find themselves making a choice between buying a home and starting a family and remaining in legal aid Community Care practice.
- Burnout is a particular problem. Supporting clients in crisis who are so dependent on public services can be extremely stressful. The need to do so whilst working within the confines of legal aid and meeting high volume

targets due to low remuneration rates only compounds levels of practitioner stress.

There are particular difficulties retaining and recruiting experienced staff as supervisors.

One project participant told us about a recent advertisement for a candidate meeting supervisor standard in Community Care, with a very competitive salary, but no applications were received by anyone meeting the Legal Aid Agency's supervisor standard.

If new practitioners are not coming into Community Care practice, and it is difficult to retain those who do, inevitably there are problems sustaining a legal aid contract with its specific supervisor requirements, and in providing mentoring for younger staff looking to develop their expertise and careers.

The problems are exacerbated by the difficulties meeting the supervisor standards, particularly for those taking a career break or working part-time because of caring responsibilities.

The future looks bleak but many changes can be made now without the need for significant public funding to help improve the position.

This report shares ideas on how processes and policies could be refined by the Legal Aid Agency to the benefit of all, for changes to the supervisor standards and other requirements, for action to address wellbeing and burnout, and a plan for student engagement.

However, there is also a pressing need for a more radical review of the way the legal aid scheme operates in a Community Care context. The underlying financial sustainability issues must be addressed to ensure that this area of practice survives and meets the very pressing need for specialist legal help for this client group.

Why this project is needed

Access Social Care (ASC) is a new charity working to provide access to justice for people with social care needs. It acts as a central hub for social care advice by providing second-tier support to helpline organisations and advice and casework support to social care providing organisations and their beneficiaries through a membership model. The legal team at ASC is equivalent to a legal aid practice in structure and experience and has a number of members who have worked together to provide Community Care advice and casework support for over 10 years.

ASC does not currently hold a legal aid contract, but where a client is eligible for legal aid, the organisation tries to refer them to legal aid providers who should be able to assist. Despite the numbers of organisations that hold relevant legal aid contracts, ASC finds it extremely difficult to secure advice for people from specialists with legal aid contracts. It is almost impossible to refer people successfully, even though fundamental breaches of their most basic rights are taking place. Referrals

are more likely to be successful when the bulk of work normally funded by Legal Help has been completed by the ASC team, and it is more likely than not that certificated work can follow.

Community Care cases are often complex, both legally (it is a public law discipline within the context of a number of complex statutory frameworks) and factually (there will often be a long history of interaction between the client and social services authority and material of which the client is not aware). There is often a lot of paperwork to read and significant preparatory communication required to identify and crystallise the legal issues underlying the presenting problem. After early legal help through specialist advice, in the vast majority of cases the local authority will reconsider, so the cases do not need to proceed to litigation. The experience of ASC's legal team shows that access to early specialist legal advice is critical. They have a 98% success rate in securing what the client needs through their casework.

ASC commissioned this research to explore the reasons why it is so difficult for individuals to find specialist legal advice, particularly early Legal Help funded through legal aid. Is it because there is a shortage of practitioners and, if so, what is causing this? Are there other factors at play? We suspected that there are a number of factors specific to Community Care legal aid practice which contribute, directly and indirectly, to the reduction in provision and, in association, the erosion of the career pathway in this field which, in itself, impacts on the ability of providers to continue to provide.

In order to support this project we brought together⁴:

Karen Ashton – expert in Community Care law and experienced legal aid practitioner from Central England Law Centre.

Lainey Gough – oversees operations at Access Social Care and in charge of recruitment, retention, operating models and staff wellbeing. Also a former legal aid practitioner in Community Care.

Vicky Ling – consultant and expert in legal aid with a detailed understanding of the changes to legal aid over time, across all civil categories and crime.

Emily Sherratt – student and volunteer with Access Social Care.

COMMUNITY CARE LEGAL CAREER PATHWAYS REPORT

The following sections set out what we did, including how we engaged with the sector. We go on to provide context on the problems with social care, the demand for advice and what the data tells us is happening in legal aid for Community Care.

⁴ For more information about the team, see Appendix 1

Although the work undertaken was focussed in England and the Care Act, given the nature of the issues it seems likely that the findings and recommendations would be relevant to Wales.

The next section of the report establishes in more detail, why there is a lack of supply, focussing on legal aid, legal aid supervisor standards, retention and burnout, and finally the lack of opportunities for students to develop an awareness of Community Care as a practice specialism.

We make 11 key recommendations for change.

This is a field of practice in crisis. For this reason, our recommendations focus on improvements that can be made now without the need for significant additional public funding. Some of the critical reforms are dependent on collaborative working between practitioners and the Legal Aid Agency. We note that the Ministry of Justice is currently considering sustainability issues, which we hope will provide an opportunity to consider the pressing need for the more fundamental reforms required. We make further recommendations for future research and scrutiny.

What we did



We wanted to combine quantitative and qualitative data. In addition to a survey and interviews, we:

- considered the implications of Access Social Care’s reports and statistics and their casework experiences
- reviewed the data from the Legal Aid Agency, Law Society and Office for National Statistics
- took into account survey data from Directors of Adult Social Services
- looked at the relevant material in the Westminster Commission report on legal aid sustainability⁵, and the Justice Committee’s report, The Future of Legal Aid⁶
- reviewed the Ministry of Justice’s post-implementation review of the Legal Aid Sentencing and Punishment of Offenders Act 2012⁷

We conducted an online survey of Community Care practitioners’ views. We also conducted some one-to-one interviews with Community Care practitioners, both those working in legal aid now and those who have left legal aid.

We investigated the availability of university courses which include Community Care law and surveyed students online to find out about their awareness of Community Care as a career choice.

We hosted two round-table events. The first shared our initial findings and discussed possible solutions, including any ‘quick wins’. The second focused on certain issues arising from the first but goes into more depth. The events involved Community Care practitioners from both private practice and the not-for-profit sector; people still practising and those that have left; academics; and young people considering or embarking on a career in social welfare law.

We spoke to a Young Legal Aid Lawyers (YLAL) representative regarding the SRA Solicitors Qualifying Examination and Qualifying Work Experience route to qualification as a solicitor, the Head of Practice of a university clinic offering Community Care casework, and the CEO of Access Social Care.

We adopted the Legal Aid Agency’s contract definition of Community Care law ([see Appendix 2](#)). In some places we refer to ‘core Community Care’, by which we mean cases concerning rights under the Care Act 2014, e.g. rights to assessment, eligibility decisions based on minimum eligibility criteria; and care and support to meet eligible needs.

⁵ Inquiry into the Sustainability and Recovery of the Legal Aid Sector, The All Party Parliamentary Group on Legal Aid, October 2021. https://www.apg-legalaid.org/sites/default/files/The%20Westminster%20Commission%20on%20Legal%20Aid_WEB_0.pdf

⁶ The Future of Legal Aid, UK Parliament, July 2021. <https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/70/7002.htm>

⁷ Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), Ministry of Justice, February 2019.

Problems with social care – huge demand, restricted budgets

Social care is a sector in crisis. Demographic changes over the longer term and the more recent impacts of increasing inequalities in health mean that more people are likely to need social care at some point in their lives. However, service provision is not meeting people's needs.

In September 2020, Access Social Care commissioned an academic literature review from Professor Forrester-Jones and Mark Hammond (the Forrester Report).⁸ Their main findings include the following:

The numbers of people receiving social care has fallen by 7% between 2015/16 and 2018/19. Yet at the same time:

- the number of people with a disability in the U.K. has continued to rise and is now around 21% of the total population, or 14.1 million people
- there is also an increasing number of people with learning disabilities who, thanks to medical advances, are now not only surviving childhood, but living much longer
- the number of older, and oldest-old, people has also been rising as it is in many countries. In the UK, the number of people over 85, when needs tend to increase sharply, will double from 1.6 million by 2041⁹

The authors of the report concluded:

“These changes and pressures on adult social care however have not been matched in the last decade by increases in available resources or by clearly articulated and robustly modelled strategies for tackling these incipient challenges. Since 2010 the amount spent by councils first fell sharply and has since recovered slowly to near the same real times level, but during a decade when demand and needs have risen considerably. There is a broad consensus across local authorities of all political stripes that social care is underfunded.

Unsurprisingly then, many studies identify large and increasing numbers of people who are not receiving the social care they need and to which they may well be entitled under the legislation. (Our emphasis)

The authors' conclusions are consistent with the findings of the Association of Directors of Adult Social Services (ADASS). For several years, ADASS has carried out an annual survey of its members. In the survey published in July 2021, 79% of

⁸ Rachel Forrester-Jones is Professor of Social Policy, and Director of the Centre for Analysis of Social Policy (CASP) at the University of Bath. Mark Hammond is Visiting Professor in Public Policy, Christ Church University, Fellow of the Centre for Analysis of Social Policy, University of Bath, and former Chief Executive of the Equality and Human Rights Commission and of West Sussex County Council.

⁹ There is some evidence that the life expectancy may have started to decline in recent years while some communities may be going into reverse [Life expectancy declines in England before COVID hit with big North-South divide, new data shows | UK News | Sky News](#)

the adult social care directors who responded have either partial or no confidence that their 2021/22 budgets would be sufficient to meet their statutory duties.¹⁰ This is not something that can be laid at the door of the pandemic. The survey undertaken in April / May 2019 (i.e. pre-Covid) found that 65% of directors had either partial or no confidence that they would meet their statutory duties and when asked to anticipate the position in following years, less than 5% of directors were fully confident they would meet their statutory duties.¹¹

Particularly disturbing is the finding in the July 2021 survey that nearly one quarter (24%) of respondents reported being less than confident that their 2021 / 22 budgets would be sufficient to be able to meet the basic entitlement of care and support to meet eligible needs. This increased to one third when they were asked to anticipate the position in 2022 / 23. The survey undertaken in April / May 2019 (again pre-Covid) found that 15% of directors reported being less than confident they would be able to meet eligible needs that year, and when asked to anticipate the position the following year, this increased to 24%; i.e. nearly a quarter of the directors who responded were already (pre-Covid) anticipating a fundamental problem in 2020 / 21. In short, Covid has simply exacerbated a pre-existing problem.

The Forrester Report is also consistent with the experience of the Access Social Care casework service that even the most basic social care rights are not being fulfilled.

Need for advice

The experience of Access Social Care is that many people are unaware of their rights and would never think to try and get specialist advice and support, which is a concern in itself. Nonetheless, there is evidence of rising demand. ASC led a data collaboration project in partnership with helplines from Royal Mencap Society, Age UK, Carers UK and Independent Age. The project found that contacts for social care advice increased by 110% in the period between April 2019 and March 2021¹². Unpaid / informal carers seeking advice had risen by 394% since 2019, suggesting people were struggling to cope with caring responsibilities.¹³ Queries around charges for social care rose by 45% in March 2021 compared to April 2019 and needs assessment queries rose 84% in the same period.¹⁴ ASC found from a number of discussions with helpline providers that they are unable to offer the specialist advice that is often required. Mencap shared their observations on this issue:

'We have thousands of contacts each year with people seeking advice on community care related matters for loved ones with a learning disability. Whilst we can provide initial advice and casework support, there is a huge need for specialist advice and support for people to challenge unlawful decisions. This is why we work with Access Social Care to ensure that we can

¹⁰ <https://www.adass.org.uk/adass-spring-survey-21> (p20).

¹¹ https://www.adass.org.uk/media/7295/adass-budget-survey-report-2019_final.pdf

¹² Ibid

¹³ Ibid

¹⁴ Ibid

refer people to specialist advisors regarding their legal rights and challenging unlawful decision making. Many helplines cannot afford services like this. It is incredibly difficult to find legal aid lawyers to take these cases on and demand for specialist advice is only rising as care needs have escalated during the pandemic, some services have not fully re-opened and people have faced reductions in support.'

In response to our survey of the legal sector, providers reported that they are unable to meet the demand of those seeking advice. We sent out requests to participate in a practitioner survey to 118 email addresses. Some were to generic email addresses (e.g. 'info@law firm name'), which did not produce any responses. The 93 emails sent to named individuals produced a 23% response rate. 19 of those who responded said that they regularly had to suspend acceptance of new referrals. The reasons given included:

- The team was at maximum capacity on existing cases;
- Being in a small team and having limited capacity anyway;
- Having to practise across other areas of law in addition to Community Care;
- Not having enough competent junior staff.

In a situation of under-provision to meet demand, a growth in Community Care practice and in career opportunities for Community Care practitioners would be expected. However, as we explain below, in fact the number of legal aid Community Care providers has not grown but sustained a slight fall. In addition, Legal Help matter starts have fallen significantly.

The experience of ASC's legal team indicated a possible explanation. They tried over an 18 month period to refer every case that fell within scope for a financially eligible individual to legal aid practitioners. However, in the vast majority of cases they were told officially that there was no capacity, and unofficially that these cases are loss-making and therefore difficult to take on. The legal team then changed approach and tried referring urgent cases or cases more likely to be issued in court, both of which would be more likely to move on to 'certificated' legal aid with a higher remuneration rate. They had more success in placing these referrals, but increasingly felt they were having to spend a significant amount of time doing preparatory work and then convincing organisations to take cases on, by explaining the case theory, key points to issue on and reasons why this could be done under a legal aid certificate. Sometimes they had to speak to up to 10 different organisations when trying to place a case.

We explored this issue in the research.

The data on legal aid

We would expect the increase in problems accessing social care services to be reflected in an increase in the demand for legal aid funded specialist legal advice, because of the link between poverty and disability. In fact, there are very few places for people to access legal aid funded specialist advice as huge parts of the country have no specialists doing the work. The evidence shows significant 'legal aid

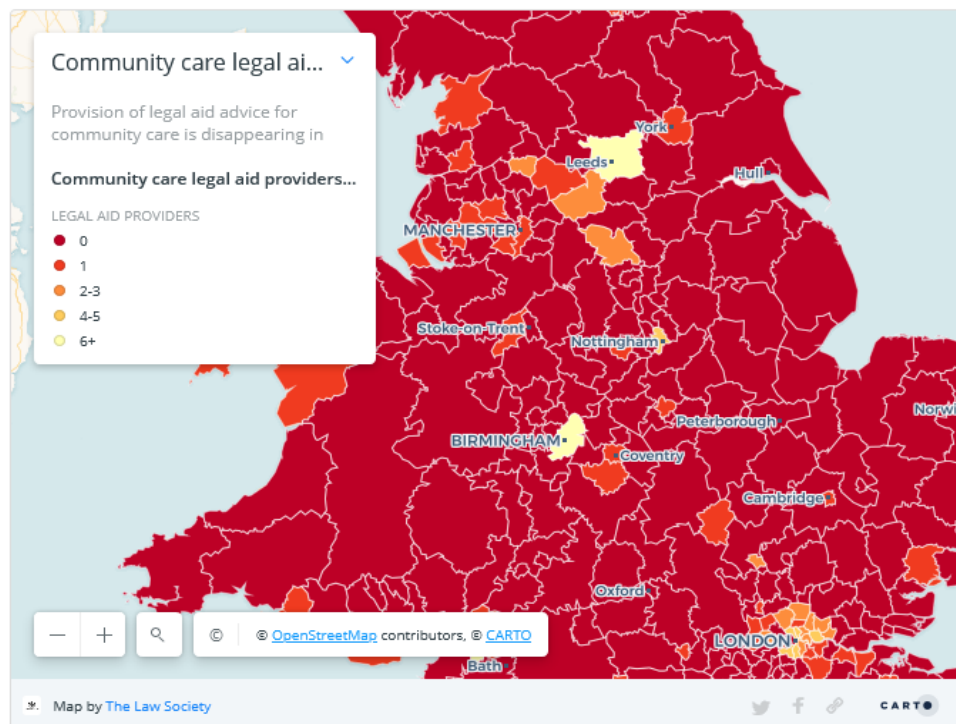
deserts' in this area of practice. However, this is not because the number of organisations holding a legal aid contract in this area of law has changed a great deal over the last 10 years.

Whilst the lack of legal aid community care practices, in itself, will impact on career opportunities and access to specialist legal help, perhaps the more significant issue is the dramatic reduction in the number of new Legal Help cases those legal aid providers are taking on. Alongside this, there has been an increase in certificated work. This might suggest that the same quantity of work is being undertaken which may have sustained the opportunities to work in this field. However, our work suggests that the picture is more complex than this, with significant implications for access to specialist advice and for the health of Community Care practice.

Community Care advice deserts

The Law Society of England and Wales analysed data from the Legal Aid Agency directory of providers (February 2021) and the Office of National Statistics (2021) and found that in England and Wales:¹⁵

- 67% of the population, or over 40 million people, do not have access to a Community Care legal aid provider in their local authority area
- only around 15% of the population have access to more than a single legal aid provider of Community Care law in their local authority area



¹⁵ <https://www.lawsociety.org.uk/campaigns/legal-aid-deserts/community-care>

The number of Community Care contracts has not dropped significantly as has happened in some other areas of law.

The following table was produced by the Ministry of Justice in answer to a parliamentary question raised by Karen Buck MP in September 2021.¹⁶ It shows the number of civil legal aid providers (firms) in each year, broken down by category of law enquired about, from 2012 to the most recent quarter. This indicates a cyclical pattern: an increase in the number of Community Care providers followed by a year-on-year decrease until there is a sudden recovery after 3 or 4 years to the original level to be followed by another year-on-year decrease.

In our experience, an increase has tended to follow a new contract tender round. This data suggests that new providers win a contract but then start to drop out almost immediately. This is the pattern that would be expected in a field where financial sustainability is problematic and is consistent with the picture painted by other evidence.

Volume of Providers (firms)

Category of Law	Apr-12	Apr-13	Apr-14	Apr-15	Apr-16	Apr-17	Apr-18	Apr-19	Apr-20	Apr-21	Sep-21
Claims Against Public Authorities	63	58	54	53	65	65	64	80	74	71	70
Community Care	85	83	71	91	87	81	76	94	88	83	82
Discrimination	0	0	0	0	0	0	0	0	17	18	17
Education	24	0	0	0	0	0	0	0	8	13	10
Immigration Asylum	197	239	226	199	182	166	141	203	189	176	172
Immigration Other	198	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Family	1,557	1,352	1,269	1,211	1,160	1,090	1,003	1,029	992	959	937
Clinical Negligence	169	166	156	142	107	106	100	100	99	95	93
Mental Health	172	168	160	176	169	158	147	156	147	135	135
Public Law	87	83	79	74	92	89	84	110	99	95	95
Welfare Benefits	286	0	14	15	15	16	14	52	41	38	36

¹⁶ <https://questions-statements.parliament.uk/written-questions/detail/2021-09-16/50605>

New Legal Help matter starts

The table below compares the number of Legal Help matter starts opened in the first quarter of 2011 with the first quarter of 2021. It shows that the case numbers in Community Care have fallen by 77%.¹⁷

Number of matter starts opened in non-family work

Area	Q1 2011	Q1 2021	Reduction %	Summary of impact of LASPO on scope
Community Care	1836	427	77%	No change
Actions against the police	1034	390	62%	Scope of work reduced
Clinical negligence	882	6	99%	Restricted to neo-natal cases
Consumer	506	69	86%	Almost completely removed from scope
Debt	32580	43	100%	Almost completely removed from scope
Discrimination	733	496	32%	No change
Education	1286	348	73%	Restricted to special educational needs
Employment	6542	3	100%	Almost completely removed from scope
Housing	30657	5446	82%	Most disrepair removed from scope
Immigration/Asylum	23129	6970	70%	Almost all immigration removed from scope
Mental Health	9483	8613	1%	No change
Miscellaneous	934	17	98%	Different definition
Personal Injury	286	7	98%	Almost completely removed from scope
Public Law	495	565	Increase	No change
Welfare benefits	26360	32	100%	Almost completely removed from scope

Reductions in some areas of law were predicted post-LASPO, as case types were removed from the scope of the legal aid scheme; but this was not expected in Community Care, as scope in this category was not reduced. Only three other areas experienced no change in scope: Discrimination; Mental Health and Public Law. None experienced the dramatic fall in case numbers suffered in Community Care. Discrimination sustained a 32% fall, Mental Health 1% and Public Law increased by 14%.¹⁸

¹⁷ Source [legalaidstatisticstool | Tableau Public](#)

¹⁸ Public Law matter starts increased by 70. Even if the subject matter of all of these fell within the scope of the Community Care category (although in reality only a very small percentage is likely to

The decrease in Community Care matter starts was happening at a time when we would have expected to have seen a significant increase, because it coincided with the Cameron / Osborne period of austerity measures, increases in need arising from demographic changes and the difficulties local authorities have had resourcing adult social care.

Community Care certificates

The following table¹⁹ shows that both the volume and fees paid under legal aid certificates in Community Care exceeded the MOJ's (Ministry of Justice) predictions about the impact of LASPO (the Impact Assessment²⁰). The Impact Assessment figures show that the MOJ did not expect either the volume or cost of certificated Community Care work to increase. The 'Actual' figures show that the forecast was wrong on both counts, with the volume of work increasing by 75% and the cost of the work increasing by 138%.

Certificates in Community Care			Volume change		Fees change	
Category	IA %	Actual %	Actual Nos.	IA %	Actual %	Actual fees
Community Care	0%	+75%	+630	0%	+138%	+£4m

One explanation is that the nature of the cases being taken on was such that they were more likely to move on to legal aid certificates. The evidence we have gathered from practitioners suggests that the increase is, at least in part, a result of a number of Community Care practitioners responding to their challenging practice environment by increasing the amount of Court of Protection work they do within the overall Community Care category. It is our understanding that Court of Protection work is more likely to move directly on to a certificate without using the Legal Help stage of the legal aid scheme.

All of this suggests that the demand (as measured using the MOJ data) for Community Care Legal Help advice is being artificially depressed and skewed away from 'core' Community Care work. However, before considering this further, we will consider the explanations suggested in the MOJ's post-implementation LASPO review.

have done so) they would go nowhere near replacing the 1409 reduction in matter starts in the Community Care category itself.

¹⁹ Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), Ministry of Justice, February 2019, fig.4.

²⁰ Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), Ministry of Justice, February 2019, para 138.

LASPO and the post-implementation review

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) fundamentally changed the basis on which legal aid had been provided since the Legal Aid Act 1988. In doing so, it removed some areas of law from legal aid, and significantly reduced the scope of legal aid in others. In addition, as noted by the Westminster Commission on legal aid,²¹ fees have not been increased since 1996, and were cut by 10% in October 2011.

The Ministry of Justice conducted a post-implementation review (PIR) of LASPO²². The report notes that:

*'The volume of legal help has fallen in these categories; 13% in mental health and 63% in Community Care, despite the fact there was no scope change. This could be due to a number of factors, such as a potential lack of awareness of the availability of legal aid, the potential impact of clustering of problems (discussed in more detail below), or wider changes in society, such as changes to consumer rules. The fact that civil representation increased in these categories – potentially due to an increase in deprivation of liberty cases under the Mental Capacity Act 2005 – further suggests that there are multiple factors at play and it is difficult to isolate just one driver.'*²³

As noted above, since the PIR, there has been a further 14% drop in the numbers of matter starts being opened (cases being taken on at an early advice, pre-litigation stage).

However, although there had been a dramatic change in the profile of legally aided Community Care work, there was no specific focus on the Community Care area of practice in the PIR because there had been no change in scope. The review report could only speculate on potential causes. Nonetheless, it is of interest that the increase in Court of Protection work was identified as a potential factor in the mix. What our work has suggested is a potential direct link between the decrease in Legal Help and the increase in certificated Court of Protection work.

Practitioner comments:

'It is quite hard to make money.....We would never have said we were Community Care specialists. There was no active decision not to do it, it was individual fee earners' decisions to move into other areas. We have one person doing CoP work. It is viable at higher legal aid rates.'

²¹ Inquiry into the sustainability and recovery of the Legal Aid Sector, All Party Parliamentary Group on Legal Aid, Westminster Commission Report, 2021 p.22-23

²² Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), Ministry of Justice, February 2019.

²³ Op cit, para 138.

REASONS FOR LACK OF SUPPLY

How Legal Aid *really* works in Community Care

Rates of Pay

Initial advice is provided under the Legal Help scheme. This is paid as a fixed fee of £266,²⁴ which funds 5 ½ hours work @ £48.24 per hour outside London, or £52.65 per hour in London. If a case costs more than 3 times the fixed fee, costed at these hourly rates (approximately 16 ½ hours work), it is said to ‘escape’ the fixed fee and can then be paid at hourly rates in full. Furthermore, most civil legal aid pay rates have not been increased since 1996, and in fact were reduced by 10% in October 2011.

Even if the hourly rate used fairly reflected the cost of providing the service, a fixed fee scheme can only work financially if the fee has been set in a way which reflects the true average cost of completing the Legal Help stage of work (having excluded these which escape the threshold); i.e. the ‘swings’ must balance out the ‘roundabouts’. We understand that, on introducing the scheme, work was undertaken to assess the average cost of a case in each field of work. However, that assessment may have been distorted in particular ways, for example by excluding practices in the not-for-profit sector, which at the relevant time were not paid on an hourly rates basis, so could not be easily compared.

As noted above, legal aid practice has been a challenging practice environment for some years. If Community Care practitioners had already been undertaking some strategic caseload balancing to minimise the work undertaken on Legal Help in order to try and sustain viability, due to the relatively low hourly rate compared to certificates, this may also have distorted the true average figure.

Furthermore, the large range of case types that come within the scope of Community Care (see below) will make it particularly difficult to ascertain an average that will work for providers across the board because they will have different case mixes. In addition, any initial flaws in setting the fee will have been exacerbated by failures to increase rates. The financial impact for any individual provider will be that much greater for every case which exceeds the fixed fee but falls short of the escape onto an hourly rate.

Practitioner comment: The fixed fee funding system works against solicitors being prepared to take on the significant amount of cases that could be resolved with approximately 10 hours work.

²⁴ Fixed fees for Legal Help were introduced in October 2007 as the Department of Constitutional Affairs’ (DCA) response to a report by Lord Carter of Coles. These were based on average claims data for private practice firms and included a wide range of cases within scope of legal aid before the LASPO cuts. As such they are not comparable in any way to the cost of doing such work today. See ‘Legal Aid The Way Ahead’ CM993, DCA November 2006.

Practitioner comment:

A couple of cases a week come to me that I won't take on. I try to refer on, giving people the names of a number of firms but I find that people come back saying that none of the firms would take the case on. These tend to be cases which are relatively straightforward – no difficult legal question as such but where the Council is clearly getting the law wrong. They are unlikely to go to court. One firm said that if I cannot guarantee a case which is clearly going to reach the 3 times the LH fixed fee they won't take it. I get the feeling most lawyers won't touch cases like this.

See [appendix 4](#) for more information on our survey findings.

In addition, legal aid rates are low. There are several recent reports which highlight the extent to which legal aid rates have fallen behind private charging rates and have recommended that legal aid rates should be increased.²⁵ The Westminster Commission report stated:

*'We recommend that legal aid fees be raised in line with inflation as this would mitigate the damage done by many years of frozen or decreasing fees. This would incentivise practitioners to return to legal aid work and reflect that the cost of delivering services has increased over time.'*²⁶

This is particularly problematic for Community Care casework where cases often require significant amounts of work using Legal Help which pays at the lowest rate of the various legal aid schemes.

A typical case

In Community Care work, the client will often not know the legally relevant cause of the problem which has led them to seek help – they only know their experience of their dealings with the local authority (LA) and the outcome. For example, the root cause of a decision not to provide care and support may be a legally inadequate assessment, an erroneous application of the statutory eligibility criteria, or the application of a policy unique to that LA. In short, it is usually impossible to advise without significant investigatory work even to formulate an initial case theory.

In addition:

- Cases will often have a lengthy factual history of dealings between the client and the local authority.

²⁵ Inquiry into the sustainability and recovery of the legal aid sector, Westminster Commission on Legal Aid, All Party Parliamentary Group on Legal Aid, October 2021; Independent Review of Criminal Legal Aid, Sir Christopher Bellamy QC, November 2021

²⁶ Op cit p. 27.

- Clients commonly require a significant level of client care support to enable them to successfully instruct a legal adviser. These are the very people who are least likely to have been able to resolve their difficulties with the social care system themselves.
- With regional contracts and provider clustering, clients may well be at a distance from the provider. Although a lot of casework can be undertaken without face to face meeting, where there are issues of trust, mental capacity, or communication this may not be possible and it may not be that practical for the client to travel because of their disabilities. For such clients, travel time also has to be built in, at an even lower remuneration rate.
- Most cases are not dealing with an event, but a process which is ongoing. Relevant facts are often changing while the caseworker is trying to undertake initial investigations, which requires frequent and unpredictable case review.
- Even straightforward investigative tasks can end up being time-consuming and sometimes will require the use of the complaints procedure or other statutory rights (such as access to personal data) to obtain even basic information to which the client is entitled.

What may appear to be straightforward cases (e.g. inadequate assessment) are often complex with a number of potential unlawful acts which will need to be explored. For example, an inadequate assessment may be the consequence of an error of law (such as a narrow interpretation of eligibility outcomes which lead to a failure to collect relevant information); an irrational failure to make relevant enquiries; a breach of regulations by reason of a failure of the decision-maker to address their mind to need for expert input, and so on.

Practitioner comment:

Because a lot of our clients have difficulty travelling and/or they live in care homes, hospitals or supported accommodation or are the sort of client that struggles to give instructions, we often need to do home visits. These can be so that we can meet them in person; so that we can check to see if there are conflicts of interest with people who may purport to speak for them; so that we can see the effect of their accommodation, poor equipment, their carers, family members, surveillance, deprivations of liberty (locked doors, etc.) on their living situation; and for other reasons. So, the ability to do at least one home visit in a case is important in many cases. So, we will often turn down cases that are too far away. This may not apply to Community Care solicitors who have clients with more social / financial capital who find it easier to instruct solicitors. During lockdown, we took on cases remotely and realised how much we missed by not seeing people in person.

The implications of Community Care casework being a public law discipline

Where the key remedy available to a caseworker is judicial review, the casework is necessarily front-loaded. It is for the claimant to persuade a court that their case is arguable and the evidence and legal argument must be set out in the permission application. The limitation rule is to issue promptly and, in any event, within 3 months from the date on which the grounds first arose. Unless the individual is already in touch with a legal adviser, the point at which they seek legal help will often be some way into this short limitation period. Finding a specialist legal adviser to take their case may also take some time.

Not only will this impact on the amount of time that has to be invested immediately into the investigatory work, but it can mean that what would ideally be more efficient sequential investigative tasks have to be undertaken simultaneously.

In order to be able to advise on the merits and strategy in a Community Care case, it is necessary not only to be familiar with the legislative framework, but to understand how to apply it in a public law analysis and to be able to apply the common law public law principles which will impact on the way the powers are exercised and the duties performed. For example, the content of the explanation of a statutory personal budget calculation (which will be fundamental to an assessment of the merits of a challenge to the adequacy of resource allocation) turns on the common law duty to act fairly.

This is a skill which it takes experience to develop, not least because the decision-making is infused with elements of professional social work judgement with which a court will not interfere. All of this must be navigated effectively.

Each stage of the case therefore requires conduct or close supervision by a specialist. This is at least as important in the early stages (in order to ensure that an appropriate case theory is formulated to guide the initial direction of the case) as it is during litigation. It is a great mistake to see the early stages as somehow less complex or 'easier' in casework terms. One project participant noted that many community care cases are the type of case which are unlikely to proceed to litigation but are nonetheless likely to take some time to resolve which means that they remain funded through the Legal Help scheme, but they are often as complex and it is difficult to allocate them to paralegal staff.

Even if a Community Care case is delegated at some point to a less experienced caseworker, regular specialist review and supervision is required. The provision of supervision will often need to be more akin to co-working because it will require consideration of relevant factual material, including documents, in order to be able to provide meaningful input.

Also, the breadth of issues covered within the Community Care category for legal aid purposes is broad and only an experienced practitioner could do this effectively. The range of work includes:

- adult social care decisions under the Care Act;
- section 17 support for 'Children in Need' by reason of disability;
- section 17 support for 'Children in Need' by reason other than disability (e.g. families who are found intentionally homeless);
- migrant support;
- support for children in the care system and on leaving care;
- Court of Protection best interest issues;
- service closure and reconfigurations;
- health / social care divide issues.

Does the availability of Investigative Representation help?

This is a useful part of the legal aid scheme, which is paid at the higher certificated rates of remuneration (and with the possibility of a further uplift); but it is necessary to have formulated a case theory for the purpose of a funding application and this requires some investigation before an application can be made. Furthermore, it will take time to secure a decision on the application. Where a caseworker is working within the judicial review time limit, this waiting time may prejudice the client's case.

Our interviews and roundtable discussions identified that the timeframe problem and inconsistency in LAA decision-making on investigative representation applications is leading to what may be an under-use of this type of funding and creating additional work for both the LAA and practitioners.

Practitioner comment:

One problem we do have is applying for legal aid, whether investigative help or a full certificate. We know there are a couple of people in the special cases unit who understand Community Care but CCMS goes to anyone. We have to appeal and then it goes to someone who understands it. Sometimes we use caseworkers' personal emails to say we have put an application through CCMS – please could you pick it up.

It was better when you could use your delegated functions. There was more understanding at the LAA. Some cases are blindingly obvious but we get a refusal at a crucial point, losing a week.

It takes time for an individual to reach a legal adviser. People generally don't think in terms of legal rights when they have a social care problem. Then they have to find a legal adviser with the relevant expertise, perhaps without the benefit of understanding the 'Community Care' jargon. When they do, there is initial investigation to formulate a 'case theory', which can form the basis of the application. This may well mean that in many cases the 13 weeks of limitation time may well have already been whittled down to something in the region of 5 weeks or less.

The work still to be done is further investigative work, sending a pre-action protocol letter allowing 2 weeks for a response, and then considering the response and undertaking preparation work to issue proceedings. If 2 weeks of that period are taken up waiting for a decision on an Investigative Representation application, there will be serious difficulties in meeting the limitation deadline. The very tight constraints on being able to apply for certificated legal aid as an emergency do not, on the face of it, permit the use of this process to resolve this problem. It was agreed by practitioners at our roundtable event that the removal of delegated functions over 5 years ago (which allowed the caseworker to exercise the judgment to grant emergency certificate funding) reduced the opportunities to work under Investigative Representation in cases which would have met the criteria for the scheme.

In addition, whilst waiting for an Investigative Representation application to be determined, a Community Care case will often not be at standstill. The local authority may be taking further steps which, whilst not creating an 'emergency' situation, are complicating or prejudicing the case in some unhelpful way. It is not realistic to say to a client who is experiencing ongoing contact with the local authority that the caseworker can do nothing further until Investigative Representation has been granted.

Often all of these difficulties will mean that the adviser will undertake work under Legal Help even when it is really appropriate for the Investigative Representation scheme.

Views shared at our roundtable events indicated that, as a result, often, the judicial review pre-action letter is sent off the back of substantial initial work on Legal Help. If the preparation work has been done well then this, not infrequently, leads to settlement. Thus all work is funded at Legal Help rates rather than the higher certificate rates even where it would have been appropriate to have been undertaking the work under Investigative Representation.

Furthermore, the 'settlement' reached may not be a substantive final outcome and the agreement of a local authority to take whatever process step is appropriate may simply take the client to the next point in the dispute. This then requires further work which, again, is undertaken under Legal Help and may need to be a new Legal Help rather than the same one, and so you revert to another fixed fee, extending still

further the work that is undertaken at the low rate of remuneration.

This all contributes to the financial sustainability problem and the reason for fewer Legal Help cases being taken on.

For information about investigative representation see [Appendix 3](#).

Terminating certificates

Even where a certificate is granted, practitioners told us that the certificate is often discharged following settlement of the initial issue (often following the pre-action protocol letter) even though the underlying problem for the client has not been resolved and the case is simply moving into its next process phase. This means returning to the use of Legal Help at its low remuneration rates.

The consequences

The consequence of the difficulties practitioners reported with securing certificated funding, particularly Investigative Representation, is that they have to work hard to create ‘a balanced caseload’; i.e. a caseload which limits the number of new referrals taken on requiring significant work under Legal Help to ensure some degree of financial sustainability.

Court of Protection work appears to be an important contribution to that ‘balance’. We understand from a practitioner experienced in Court of Protection work that it is often conducted under legal aid certificates.²⁷ The MOJ’s statistics show that Community Care work under certificates has increased since LASPO came into effect and they acknowledge this is “potentially due to an increase in deprivation of liberty cases under the Mental Capacity Act 2005”.²⁸

Court of Protection work falls within the LAA’s contract definition of ‘Community Care’. Cases before the Court of Protection sometimes touch on the same kind of substantive issue as ‘core’ Community Care matters. For example, where an individual needs local authority-funded support and lacks capacity to make decisions about care and/or accommodation, the Court of Protection may be required to determine whether it is in their best interests to move from a hospital into a care home placement proposed by the local authority. Or the Court may be required to consider whether a set of care arrangements amounting to a deprivation of liberty

²⁷ Court of Protection work ensures that people who lack the mental capacity to make their own decisions are legally represented in cases about decisions being made in their best interests, including decisions about whether they should be deprived of their liberty, and about their medical treatment, where they should live and what type of contact they should have with their family and others.

²⁸ Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), Ministry of Justice, February 2011 para 138

should be authorised as being in the person's best interests and the least restrictive option. In looking at such issues, the Court of Protection may be able to exert some influence over the way that the local authority exercises its obligations under the Care Act, in that it can question and probe public bodies about things like what Care Act assessments they have done and what options they have considered.

But unlike the Administrative Court, the Court of Protection cannot directly rule on the lawfulness or otherwise of what a local authority does, for example whether it has completed a Care Act-compliant needs assessment. Nor can it compel the local authority to put forward options that the individual or family members have requested, as 'available' options for the COP to weigh up in a best interests analysis, if they are not ones the local authority is willing to fund. As confirmed repeatedly by the Supreme Court, the Court of Protection 'has no greater powers than the patient would have if he were of full capacity'. [*Aintree University Hospitals NHS Foundation Trust v James* [2013] UKSC 67, at para 18.] So, although Care Act processes, and how well a local authority complies with them, can significantly affect and constrain what care and accommodation options are available to the Court of Protection to choose from on behalf of an incapacitated person, legal work within Court of Protection proceedings does not replace the kind of legal work which is needed by people whose rights under the Care Act are being denied.

Our concern is that experience of conducting these kinds of 'core' Care Act cases is declining and specialist legal advice needs for this kind of work are not being met.²⁹ If practitioners are doing more Court of Protection work under legal aid certificates, they have less time for 'core' Care Act Community Care. It is not just a case of persuading Community Care providers to increase their resources to allow them to do both – they are telling us that this is not financially sustainable.

The current position does not create ideal learning opportunities for juniors. Furthermore, such diversification in work can also make it harder to maintain supervisor standards which also makes it difficult to bring people into Community Care practice.

Supervisor Requirements

Employing a member of staff who qualifies as a supervisor within the legal aid scheme is a precondition to holding a legal aid contract. This creates a useful opportunity for career progression in terms of personal development and remuneration levels.

Participants on this project identified a number of aspects of the legal aid supervisor scheme which create unnecessary hurdles to qualification, some of which are particularly problematic in the Community Care field and which undermine its career

²⁹ That is cases concerning rights under the Care Act 2014, e.g. rights to assessment, eligibility decisions based on minimum eligibility criteria; and care and support to meet eligible needs.

pathway value. Furthermore, some of those unnecessary requirements increase the costs of retaining a contract which, for a Community Care practice already struggling with financial sustainability, is a significant issue.

For example, the Standard Civil Contract 2018 requires an organisation to have a full-time equivalent (FTE) supervisor in Community Care. Practitioners involved in this research felt that this is an onerous requirement and probably unnecessary when teams and caseloads are generally small. In their view, it would be sufficient to have a part-time equivalent (PTE) supervisor requirement as is currently the case for Public Law. This could reduce overheads for some practices.

Additionally, the LAA does not permit one individual working full-time to supervise more than one category of law, even if they meet the casework and supervision requirements in both. If the LAA would allow one FTE individual meeting requirements to supervise more than one category, this would enable organisations to use one individual working full-time to cover more than one category as was the case before 2018.

Other aspects of the scheme make it difficult to attain and retain supervisor status. In our experience, many Community Care supervisors are women and are more likely to have caring responsibilities. They often work part-time, would like to do so, or take time out of paid work altogether. The LAA's supervisor requirements only recognise experience up to five years old for part-time practitioners and 3 years for full timers; so, anyone who has been out of practice for longer is then treated as having exactly the same level of skill and expertise as someone starting a career afresh. Even if the time out of practice is more limited, they may well find they have lost their supervisor status and cannot return to the same level of remuneration. Whilst there appears to be some flexibility (e.g. relating to how maternity leave is counted) this is not well-publicised and we believe it should be.

Practitioners agreed that the 'case type' experience required by the LAA's supervisor standard is the right mix of cases. The difficulty can be finding them within a twelve-month period, particularly given the likelihood of more experienced practitioners taking on fewer, more complex cases, at any one time.

The contract requires that where supervisors and supervisees usually work in different locations, they must attend each office at which they supervise staff (which must coincide with attendance by staff supervised) at least one day a month. This may not sound onerous but can cause practical problems. Whilst practitioners agree that trainees and inexperienced staff benefit from working in the same location as their supervisor, at least some of the time, there are other methods of supervision which have been developed further during the pandemic and can achieve very similar benefits, such as shared access to digital files and working in different locations but keeping a Teams link open.

In addition, the LAA requires supervisors to be employees or owners of the contracted organisation. A typical career pattern for many lawyers is to become

freelance consultants as they reach seniority. For example, many partners or directors become consultants for a number of years before they retire. The current rules prevent them from being legal aid supervisors.

Unnecessary difficulties in securing and retaining supervisor status, even for very experienced practitioners, which is often reflected in a degree of salary enhancement, has the potential to impact negatively on career attractiveness. Failure to recognise expertise can be very demotivating. One project participant told us about a recent advertisement for a candidate meeting supervisor standards in Community Care, with a very competitive salary, but no applications were received from anyone meeting this standard.

Experienced lawyers leave Community Care

We interviewed four people who have left legal aid practice. Additionally, during our roundtable events, a wider group of current legal aid practitioners reflected on retention issues within their respective organisations.

Practitioners identified four main factors which result in practitioners leaving Community Care at the point where they become experienced and would qualify as supervisors: rates of pay, compliance and interaction with the LAA, burnout, and the lack of a therapeutic model of supervision.

A view shared by many practitioners:

There is an outflow of solicitors at a stage in their career. They can't afford to raise a family / live in London or get a mortgage.

This is problematic and only compounded by the difficulties with recruitment.

Practitioner comment:

We are managing to recruit; but it is a small pool. You are taking them from another firm if you are in a firm that seems to be in a good place. You can recruit, but it depletes others.

Rates of pay

Pay was agreed to be a significant factor in the decision to leave, especially in combination with the other factors. If remuneration is too low, there is a risk that those who are more likely to stay are those who have other sources of income (e.g. a partner's salary) or reduced financial needs. This would restrict the pool of potential practitioners and reduce diversity.

Practitioners recognised that pay is not an issue that firms / organisations can solve by themselves. Some firms supplement legal aid with private work, but this is not a complete solution because the overwhelming preponderance of potential clients do

not have the means to pay privately. People with disabilities are more likely to be living in poverty. In 2020-21, over half (57%) of the people in receipt of income-related benefits lived in families where one or more members is disabled.³⁰ TUC research shows that people with disabilities are less likely to be employed than other people and those who are employed are paid less.³¹ This means they are much less likely to be able to pay a lawyer's fees out of income and more likely to rely on legal aid.

It was noted that any increases in legal aid rates would not necessarily improve pay in all practices, but if pay did start to rise, those practices that were more reluctant to increase salaries would experience the market pressure to follow suit. However, in order to give firms and organisations the ability to pay more, the financial margins in legal aid Community Care practice would have to improve.

Practitioners were concerned about how this would be perceived by the public, understanding that asking for more money for lawyers is unlikely to be viewed sympathetically. But in a context in which effective Community Care practice has become unsustainable, this nettle is one which will have to be grasped. Improved public understanding of the importance of the work would help.

Lack of specialist subject knowledge at the LAA

Some practitioners reported that due to lack of subject knowledge and practice experience at the LAA, they were having to spend unremunerated time challenging incorrect decisions made by LAA staff.

The LAA has recently launched a Civil Applications fixer service – email address ApplicationFixer@justice.gov.uk and guidance; [Civil Fixer Guidance \(justice.gov.uk\)](https://www.justice.gov.uk/civil-fix). The service is based on a similar service called 'Claim Fix' which is available in relation to bills. The Application Fixer service can be used if a practitioner believes the LAA has incorrectly rejected or refused an application, not considered the information provided, asked for documents or information already provided, or granted an incorrect cost limitation. The LAA will only review a decision based on the information submitted originally and practitioners must still submit an appeal if they wish to provide new information. Although welcome, the scheme does not address the issue of poor quality decision-making arising from insufficient experience and expertise in the field of law.

We believe the LAA and practitioners would both benefit still further if the LAA had a dedicated team to consider community care applications, as this would result in a higher 'right first time' decisions being made, thus reducing the time needed on both sides and no doubt improving relationships between the LAA and practitioners.

³⁰ Poverty 2020-21, Joseph Rowntree Foundation <https://www.jrf.org.uk/report/uk-poverty-2020-21>

³¹ Disability Pay and Employment Gaps 2020, TUC 2020

Burnout

Community Care is not a 9-5 job. Clients are often in crisis situations and because of the limitation issues and fact that clients often reach legal advisers late in the day, as explained above, it is not possible to contain legal work within normal working hours. This impacts on personal lives and commitments. The nature of community care work is complex, and it can take a long time to achieve a meaningful result for clients, which can be very stressful because it can feel like the rate of progress does not always meet what the client requires. Delays in funding being granted only compounds these issues.

It is clearly important to keep people within the profession and sharing experiences with other practitioners was said to be helpful and necessary.

Vicarious Trauma

Some of the people we interviewed talked about vicarious trauma, which is a particular risk for those working in Community Care. Trauma and issues associated with burnout can result in people wanting to leave the profession or do less community care work. Organisations should have sufficient resources available to meet their staff's needs, but those dependent on income from legal aid are unable to afford the level of support and therapeutic supervision that may be required.

Barriers facing the next generation of Community Care practitioners

Undergraduate level

We wanted to find out what perceptions students have of a possible career in Community Care law. We conducted an online survey aimed at undergraduate law students at two universities, the University of Warwick and University College London. We chose these universities because they both offer some opportunities through clinic work where students may become aware of Community Care. We wanted to conduct a wider survey of those universities offering Community Care focussed modules, but our research indicates that such universities are few and far between. We found that none of the Russell Group universities offer a specific 'Community Care' / social care module. The University of Leeds offers a 'Disability law and healthcare law' module. Healthcare law is also offered by Queen Mary, Southampton and UCL but it seems those modules only touch on access to healthcare and are more focused on issues such as malpractice, abortion ethics etc. The only undergraduate social welfare module with a sub-focus on 'client in the community' that we could find is offered at Bournemouth University, but they do not have an associated clinic.

We therefore felt that we would gain greater insight by surveying students that we knew had some awareness of Community Care work. We had a very low response

rate to these surveys with only 9 people taking part. We suspect the response rate was so low because of the time of year that we sent the surveys, which was at the start of the new term when clinics and interest in clinics is still being established.

Due to the low response rate, we need to be cautious about the inferences we can draw from the survey results, but they indicate that the students participating in the clinics understand that adults and children with disabilities are a group covered by Community Care, but there is low awareness that cases for these groups attract legal aid – the participants only found this out through volunteering at clinics. This point was made during our semi-structured interviews, where one university clinic leader commented that, prior to volunteering, most students assumed that Community Care casework was something that would be offered on a pro bono basis.

Of those surveyed, 7 out of 9 said that they would be interested in finding out more about a career in community care and they have sought more information about this, primarily via their university. Unfortunately, the two participants that did not express an interest in pursuing a career did not provide any more information on the reasons for this. Further research on this is needed.

Postgraduate level

We do not know how many people attempt to go on and pursue a career in Community Care work and the barriers they encounter; further research is needed here. We did, however, interview a representative from the Young Legal Aid Lawyers, who noted that neither the post-graduate diploma in law nor the legal practice course, which have been traditional routes to qualification as a solicitor (being replaced by the Single Qualifying Examination (SQE)),³² had a specific focus on social welfare law. We heard that YLAL has concerns that the SQE will further limit access to careers into social welfare / justice due to the limited exposure to these areas on the exam curriculum, especially for those with non-law degrees. It was felt that the SQE's focus is on skills and knowledge which may be more beneficial for commercial private practice.

We welcome the launch of the Social Welfare Solicitors Qualification Fund³³, (SWSQF) by the City of London Law Society, BARBRI and YLAL to provide financial assistance to aspiring solicitors working in social welfare law for organisations serving disadvantaged communities. The SWSQF funds the Solicitors Qualifying Exam (SQE) preparation courses and assessments. However, this scheme is relatively small and can provide only part of the answer.

In addition to social welfare focussed modules not being offered, concerns were raised by YLAL that legal aid work has no profile at university level. Most legal aid funded organisations being unable to afford the fees associated with most law fairs, which is where students tend to be exposed to different career opportunities.

³² <https://www.sra.org.uk/become-solicitor/sqe/>

³³ <https://www.citysolicitors.org.uk/clls/social-welfare-solicitor-qualification-fund/>

Student awareness of Community Care, learning and development of junior staff was also discussed in one of the round-tables (see [Appendix 6](#) for discussion notes) and we have been able to draw on the contributions from practitioner comments made in one-to-one interviews.

Practitioner comment:

They used to have training contracts subsidised by the LAA (sic) so they were bringing on new blood, but they don't now. It is difficult for young lawyers to come into and stay in this work even if they want to. One trainee I had was very good, but the sacrifices – being unable to get a mortgage, not having a pension etc – were too great and they moved elsewhere and tripled their salary. If trainees aren't going to stay, then firms won't take them on – they don't make enough money early on and then if they move on, legal aid firms don't have the margins to take that risk.

Key barrier issues

- Universities are not offering social welfare focussed modules, and during our round-table discussion, one academic told us that it has become increasingly difficult to offer this due to lack of take-up. This can be seen as a vicious cycle. If low awareness is contributing to low take-up which deters universities from running courses, this, in turn will further contribute to low awareness. It would be good to hear from more academics on this point.
- The students we surveyed thought that this work would only be offered on a pro bono basis (prior to volunteering in a clinic) and did not attract legal aid funding, which calls into question their understanding of a viable career in Community Care and the assumptions other students that are not participating in these clinics are making.
- A very limited number of universities offer social welfare law experience through pro bono clinics, but very few can provide Community Care advice or representation. Interestingly, it is not a category which was specifically mentioned in the annual LawWorks survey of university clinics.³⁴
- We were told during our interviews that some law clinics are overwhelmed with student volunteers, but this makes offering meaningful work experience difficult. Academics reported that it is time-consuming and difficult to find

³⁴ Law School Pro Bono and Clinic Report 2020, *LawWorks and Clinical Legal Education Organisation (CLEO)*, James Sandbach and Richard Grimes, p.16, provides data on; Asylum/Immigration, Consumer, Crime, Debt, Discrimination, Domestic violence, Education, Employment, Family, Housing, Cases under Human Rights legislation, Small business set-up, Other commercial e.g. intellectual property, Welfare benefits, Other.

suitable work and supervision for volunteers, and this can mean that some student volunteers do not get the ideal range of experience.

- Costs are thought to be prohibitive for legal aid organisations to attend law fairs.
- We also know that it is difficult to offer training contracts in this area, as retaining people upon qualification is difficult. This makes it hard to justify the cost and time investment in training. It would be helpful to know how many training contracts are made available across the sector annually.

Recommendations

Although the Legal Aid Agency's statistics reveal a steep decline in Legal Help matter starts, this should not be taken as evidence of a reducing need for specialist legal advice in Community Care. This would not reflect the experience of Access or of the practitioners who participated in this research. Indeed, the evidence is of an increasing and unmet need. Despite this, practitioners are not coming into this area of practice, and many are leaving. We have identified several factors impacting on the availability and attractiveness of Community Care as a career:

- Students are not given opportunities to develop an interest in Community Care.
- Those who would like to train in this area may have difficulty finding training contracts because of the financial challenges facing providers. It is difficult for firms to invest their already limited resources in training someone who may leave for better pay elsewhere.
- It seems that those who are still practising in Community Care are seeking ways to make it financially sustainable by balancing the number and type of cases they take on to restrict the amount of Legal Help work they are doing, resulting, in particular, in a move away from core Community Care work to Court of Protection work. This makes it difficult for practitioners to develop solid Community Care experience.
- Those who do embark on the career pathway in this field leave early due to low rates of pay, difficulties in progressing casework efficiently and effectively when using the legal aid scheme, burnout and a lack of therapeutic supervision.
- The lack of experienced practitioners makes it difficult to recruit those with sufficient experience as supervisors, who can mentor inexperienced caseworkers, a problem exacerbated by the rigid rules governing supervisor qualification and how they work in legal aid practice.

We make 11 key recommendations:

1. Improve the financial sustainability of Community Care legal aid practice

We found that financial sustainability is a key issue adversely impacting on career pathways in a number of different ways, from the availability of training contracts and

the recruitment and retention of younger practitioners, through to the availability of, and opportunities for, experienced practitioners to take on a supervisory and mentoring role.

We make the following detailed recommendations under this heading. The first three are for some immediate legal aid process reforms that could be implemented fairly quickly; but we also call for a fundamental review of the way the legal aid scheme operates in a Community Care context.

1.1 The LAA reviews, in conjunction with experienced Community Care practitioners, the following:

- The process for applying for and determining Investigative Representation applications in order to ensure this type of funding is accessible in a timely fashion and is used in cases where the criteria are met.
- The process for moving between Legal Help and certificated funding to achieve a better fit with the staged nature of many community care cases, and with a view to addressing the current 'flip-flopping' between the two forms of funding throughout the life of what is, in reality, a single case.
- The process for applying for and determining applications for emergency representation. The aim would be to address disincentives to apply for certificated funding in appropriate cases because of the prejudice caused by delays in the practitioners' ability to take steps (that they would be taking for a privately paying client) whilst awaiting decisions on substantive certificate applications.

We would welcome the opportunity to participate in such a review, with the benefit of our panel of experienced practitioners (in the current absence of a practitioner association in Community Care), to identify where improvements could be made.

1.2 The LAA shares with practitioners the current (and any revised) staff decision-making guidance for each of the above processes, including any specific to Community Care, to assist practitioners to make appropriate and effective applications which would assist a 'right first time' approach to LAA decision-making.

1.3 A team with more specialist Community Care expertise is established to determine applications in Community Care cases. This would improve efficiency, avoid time-consuming and unfunded appeals and offer opportunities for improving LAA / practitioner working relationships. *Community Care law is different in England and Wales (E&Ws), as is the associated legal / policy landscape that might affect people who need Community Care advice and a representatives practising in E&Ws should therefore be involved.* Expertise would be enhanced by:

- Developing staff training in Community Care law and, importantly, the realities of practice in this field, in conjunction with practitioners.
- LAA staff spending time with experienced practitioners to become familiar with Community Care casework.

1.4 Community care did not receive any focused attention in the LASPO review because it remained fully in scope. There is a pressing need now for a fundamental review of the way the legal aid scheme operates in a Community Care context to ensure that this area of practice survives and meets the continuing and increasing needs for specialist legal help. We recommend that the Ministry of Justice works with practitioners to review whether this area of law with such a wide scope of case types, and requiring such extensive initial work, is suitable for the current fixed fee regime. We recommend that the Ministry explores the potential benefits and disadvantages of creating a series of stage claims for Legal Help fixed fees, similar to mental health or immigration/asylum.

2. Remove unnecessary hurdles to experienced practitioners acting as legal aid supervisors in Community Care practice

Practitioners share the LAA's objective of ensuring supervision is effective. However, the current qualification criteria and practice requirements are limiting opportunities to progress to this position and make it difficult for providers to recruit and sustain contracts.

Improvements to this stage of career progression could also improve recruitment to a peer reviewer role, which would not only further enhance the career pathway; but also offer opportunities for the LAA to enhance quality.

We recommend that:

2.1 The LAA reviews the Legal Aid supervisory standards and contractual requirements in the Community Care practice context, again in conjunction with practitioners, with a view to considering:

- Allowing part time equivalent Community Care supervisors in the next contract
- Recognising a wider range of experience which falls outside the current prescribed maximum time limits
- Allowing external supervision in Community Care
- Allowing supervisors to work as consultants rather than requiring them to be owners / employees of the provider organisation
- Allowing the use of digital technologies in the provision of 'face to face' supervision

3. Develop processes and techniques to support practitioner wellbeing and avoid burnout

Project participants were of the view that day-to-day supervision needs to acknowledge impacts on well-being and burnout, which are factors influencing Community Care practitioners in their decisions to leave. We recommend:

- 3.1 Pastoral support is, wherever possible, offered routinely within firms / organisations (acknowledging that current financial constraints make this unrealistic for many practices).
- 3.2 The Law Society promotes therapeutic supervision and offers free training to legal aid practices on how to maximise this approach within current constraints.
- 3.3 Research is undertaken with psychologists and other professions into the use of a therapeutic model of supervision.

4. Promote awareness of Community Care practice as a career choice

We found few opportunities to become aware of Community Care as an area of specialism for those considering law as a profession. We make the following recommendations:

- 4.1 A strategic plan is developed to raise awareness of Community Care as a specialism, in consultation with key stakeholders, such as, LAPG, YLAL, universities, the Law Society, student representative bodies and practitioners, which would:
 - map the current provision of Community Care degree modules and clinics in universities;
 - develop a Community Care module for a law degree and promote its incorporation;
 - promote the incorporation of Community Care case studies into human rights and administrative law modules;
 - identify how professional bodies could proactively showcase practitioners who practise this area of law;
 - highlight career opportunities that are currently available.
- 4.2 Universities should offer participation to Young Legal Aid Lawyers in law fairs and other awareness-raising activities free of charge.
- 4.3 A practitioners' association is established which would bring significant benefits, not only in the raising of the profile of this work, but also in promoting professional development and well-being. Given the limited resources of legal aid practitioners, this development would need to be incubated, perhaps by LAPG and supported financially, at least in its infancy, until membership reached a critical mass and it could become largely self-funding through membership fees.

CONCLUSIONS, SUGGESTIONS FOR CHANGE AND FURTHER RESEARCH

Conclusions

Early legal advice can make a significant difference to people who are entitled to social care, securing care and support to meet essential needs. Early resolution is also often less costly to the public purse and avoids the stress and expense of legal proceedings. We found that the difficulties in accessing such advice was not the result of a lack of demand but a lack of supply. Demand for this type of legal work is going to increase as the population ages. Supply needs to be increased to ensure that the currently hidden needs of people with disabilities are met.

In a situation of under-provision to meet demand, a growth in Community Care practice, and in career opportunities for Community Care practitioners, would be expected. What we found was a career pathway in a very poor state of health reflecting an area of practice in crisis.

Older people and those with disabilities eligible for social care can rarely afford to fund their own legal fees, so legal aid is crucial to ensure they secure the services to which they are legally entitled. The current legal aid scheme is not viable as so much work has to be done on Legal Help, fees for which generally fail to cover costs. This has direct and indirect consequences for the career pathway in Community Care.

Low levels of remuneration, and high levels of stress in running a viable legal aid caseload, contribute to people leaving the field. The financial challenges to develop a viable practice have led to a reduction in the extent to which 'core' Community Care work is undertaken and, consequently, a reduction in the opportunities to train in this specialism.

The criteria for qualifying and acting as a legal aid supervisor can have a perverse consequence of excluding experienced practitioners from acting in that role, as well as making it difficult for practices to provide the mentoring that less experienced caseworkers need for their professional development and may even make it impossible to maintain a legal aid contract.

Students considering a legal career have limited opportunities to develop an awareness of Community Care as a specialist field.

It is true that Community Care involves working with clients experiencing crisis and is not a 9-5 job. Even so, many practitioners find the intellectual challenge of this developing area of law, combined with the opportunity to make a difference to peoples' lives, very rewarding. Unfortunately, the traditional approach to supervision does not recognise issues such as burnout and vicarious trauma, which, in combination with pay, influences practitioners to leave.

This research has produced many suggestions which could change the current state of the market, encouraging existing practitioners to remain in the system, undertaking the full range of Community Care work, and new practitioners to join them. Some recommendations are achievable in the short-term; others will require longer term changes involving a greater range of stakeholders. We hope that all of them will be implemented and look forward to taking this work further with a wide range of colleagues.

Appendix 1 – The team

- ▶ **Karen Ashton** – Head of Public Law and Human Rights at Central England Law Centre, specialising in Community Care and Warwick University Strategic Public Law Clinic
- ▶ **Lainey Gough** – Director of operations and Impact at Access Social Care and former Community Care practitioner
- ▶ **Emily Sherratt** – Postgraduate student with an interest in Community Care law and volunteer at Access Social Care
- ▶ **Vicky Ling** – Legal aid consultant and researcher/evaluator

Appendix 2 – Standard Civil Contract 2018 – Category definitions

Standard Civil Contract 2018 Category Definitions³⁵

Community Care

25. Legal Help and related proceedings in relation to:

a) the provision of Community Care services (as described in paragraph 6 of Part 1 of Schedule 1 to the Act);

(b) the provision of facilities for disabled persons (as described in paragraph 7 of Part 1 of Schedule 1 to the Act); and,

(c) the inherent jurisdiction of the High Court in relation to vulnerable adults (as described in paragraph 9 of Part 1 of Schedule 1 to the Act);

(d) the inherent jurisdiction of the High Court in relation to children (as described in paragraph 9 of Part 1 of Schedule 1 to the Act) where the case relates to a decision on medical treatment; and

(e) a person's capacity, their best interests (health and welfare), and deprivation of liberty issues under the Mental Capacity Act 2005 (as described in subparagraph 5(1)(c) of Part 1 of Schedule 1 to the Act).

26. To the extent that any relevant grant of exceptional funding is made (in accordance with section 10 of the Act), this category also includes all other Legal Help and related proceedings concerning the provision of services or facilities in the community, nursing accommodation or hospital arranged by social services or a public health authority, excluding services falling within the Welfare Benefits or Clinical Negligence Categories. It also covers advocacy in the Court of Protection for matters arising under the Mental Capacity Act 2005 listed at paragraph 25(e) above that are not described by paragraph 4 of Part 3 of Schedule 1.

³⁵ <https://www.gov.uk/government/publications/standard-civil-contract-2018>

Appendix 3 – Investigative representation

Extract from the Legal Aid Handbook 2022-23

Investigative representation

- 5.83 This is a type of civil legal aid funding certificate (not available in family, mental health or immigration) limited to the investigation of a claim where the prospects of success are unclear without substantial investigative work; but it appears that once the investigative work is completed, the case would meet the merits test for a representation certificate (see below).³⁶ It is preferable to conduct investigation under this form of funding where possible rather than under Legal Help as it is paid under hourly rates and there is less uncertainty about payment than a Legal Help escape fee claim.
- 5.84 The *Lord Chancellor's guidance on civil legal aid* suggests that substantial investigate work would be at least six hours of fee earner work or disbursements (including counsel's fees) of £400 or more (ex VAT).³⁷ Therefore, an application needs to be very clear about the extent of work required. It may be possible to obtain a very brief opinion pro bono from counsel to confirm that merits are not clear, and counsel will need to consider the papers in full before advising on merits. It will not be necessary for counsel to give any advice on the actual details of the case itself at this stage.

Before you apply for a certificate

- 5.85 You need to ensure that the standard criteria are satisfied (see also para 5.94):
- The case must concern a matter of England and Wales (or Welsh) law, in an area permitted by LASPO (see chapter 3).
 - The client must be an individual, and a party or proposed party to the proceedings or potential proceedings.
 - You must be permitted by your contract to carry out the case.
 - The client must not have acted unreasonably in this or any other application, or in these or any other proceedings (for example, by concealing information or acting dishonestly to obtain funding – this criterion does not refer to a client's general character or notoriety).
 - There must be no alternative funding available to the client; for example, through an insurance policy or trade union membership, or through another person or organisation the client could approach to fund the case.
 - There must be no alternatives to litigation, or the client must have exhausted reasonable alternatives, such as complaints and ombudsman schemes and alternative dispute resolution mechanisms.
 - The application should not be premature – that is, funding under Legal Help or Help at Court would not be more appropriate at this stage.
 - It must be necessary for the client to be represented in the proceedings, and funding will be refused if it is not necessary; for example, if the case is straightforward and parties would ordinarily not be represented, or if the client does not need to be separately represented.
 - Funding will be refused for cases allocated to the small claims track in the county court.³⁸

³⁶Civil Legal Aid (Merits Criteria) Regulations 2013 reg 40.

³⁷Lord Chancellor's guidance under section 4 of LASPO (2018) para 6.11.

³⁸Civil Legal Aid (Merits Criteria) Regulations 2013 reg 39.

- Representation will be refused if the case is suitable for a conditional fee agreement and the client is likely to be able to enter into a Conditional Fee Agreement (CFA), damages-based agreement or other litigation funding agreement.³⁹ This test is likely to be applied strictly.⁴⁰ See para 5.98.

Appendix 4 - Online survey of practitioners – questions and responses

In the summer of 2021, we conducted an online survey of individuals working in Community Care legal practice. We agreed that organisations and individuals would remain anonymous. The questions we asked are below.

We sent 118 surveys to 85 organisations that hold a legal aid contract. We tried to contact everyone with a legal aid contract but some emails bounced back and we were unable to identify a named individual to send it to. In the majority of cases, we could only obtain contact details by phoning the organisations and asking.

Within the figure of 118, we sent 93 surveys to named individuals (some organisations holding multiple contracts across different geographical areas). We received 23 responses and although the survey was anonymous, based on the different responses to organisation-related questions, such as the structure and numbers within the community care team, we feel relatively certain that these responses have come from 23 different organisations. The responses all came from named individuals. This represents a 23% response rate within that group.

In the surveys we asked if people would be prepared to be contacted again to take part in further research and representatives from 11 organisations agreed to this. We interviewed 6 people spread across law firms and not for profit organisations

Survey Questions – Organisations with Community Care Contracts

Introduction

Access Social Care is a charity which provides free legal advice to people with social care needs, mainly adults with disabilities who have needs which should be provided for under the Care Act 2014. We want to understand whether there are barriers to people making a career in the field of Community Care – some key issues being that legal aid does not generally provide sustainable funding for legal advice and representation for this client group, and Community Care does not have a profile in most law schools, so students are unaware that they could have a career in this area of law.

We are conducting some research to try to identify the practitioners who may be interested in working with us to unpick which areas of law under the Community Care legal aid contract are viable and we are also planning to conduct further research into Community Care as a career pathway to try to identify what would be needed to encourage more legal practitioners

³⁹Civil Legal Aid (Merits Criteria) Regulations 2013 reg 2.

⁴⁰See para 7.16 of the *Lord Chancellor's guidance on civil legal aid* (2018).

to specialise in this area of law.

We are aware that some organisations will already have participated in LAPG's legal aid census. Our work is specific to Community Care and complementary to their work. All answers will be kept strictly anonymous and not attributed to any individual or organisation. We will not be publishing who had contributed to this research in our report.

We are very grateful to you for your support with our research. This questionnaire should take around five minutes to complete. We do not expect you to go and review your own data sets; we are interested in rough estimates based on your best guesses:

1. Do you work at: A law firm; A law centre; Not for profit; Other
2. Do you know how many matter starts you have? Don't worry if you don't have this information to hand
3. Does your organisation provide Community Care advice and representation to the following client groups? Please select as many as apply:
 - Adults with disabilities eligible for support under the Care Act 2014
 - Migrants seeking support under the Care Act 2014 and/or the Children Act 1984
 - Adults with housing needs (e.g. support under s17 Children Act 1984 for families found to be intentionally homeless)
 - Adults with mental health issues
 - Adults with Court of Protection issues
 - Children in need by reason of a disability
 - Children in need on some other basis, including children in care and leaving care
 - Other (please specify)
4. Please give rough estimates for the proportion of work completed for each sub-category you have selected (eg 50% of work for asylum seekers and refugees, 30% adults with mental health issues...)
5. Do you feel you specialise in particular areas under the contract? If so, which?
6. How many advisors do you estimate work solely on Community Care matters at your organisation? What are their job titles? (eg 3 paralegals and 1 qualified solicitor 2 years PQE)
7. Do you find that legal aid is a sustainable method of funding the area(s) of work you take on?
 - Yes
 - No
 - Please provide more information [Free text]
8. If no – do you supplement your organisation's income for this work with funding from other sources? Please select as many as apply:
 - Private paying work
 - Trust and foundation funding
 - Statutory funding under grants or contracts
 - Other (please specify)

9. If you have stopped or restricted providing legal aid Community Care advice and representation to adults with disabilities eligible for support under the Care Act 2014, why was this? Please select as many as apply:
- We no longer had a staff member who specialised in this work
 - We could not recruit anyone who would specialise in this work
 - The work was no longer financially viable
 - Other (please specify)
10. Do you find that you regularly have to suspend work due to capacity?
- Yes / No
If yes, please provide more information
11. We will be setting up some telephone or video interviews with a smaller number of individual practitioners in September. They will take around an hour. Would you be willing to participate?
- Yes / No
12. We will be setting up some online round table events with a smaller number of individual practitioners in September. They will take around an hour. Would you be willing to participate?
- Yes / No

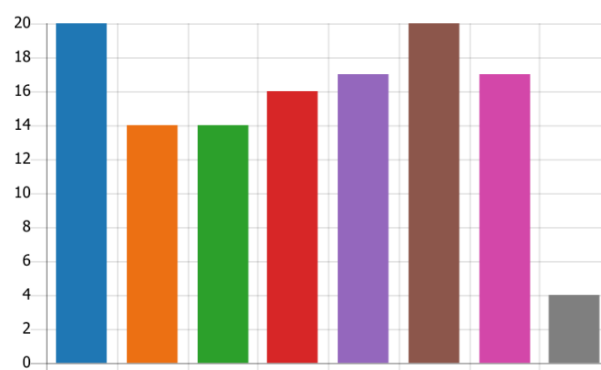
Summary of responses

- We found that nearly all respondents provide advice and representation to adults and children with disabilities, along with other areas
- The proportions of work varied considerably; but all respondents covered several aspects of legal work falling within the Legal Aid Agency's definition of 'Community Care' (see Appendix 2)

3. What areas of community care do you/your firm offer representation in? Please select as many as apply.

[More Details](#)

● Adults with disabilities eligible...	20
● Asylum-seekers and refugees ...	14
● Adults with housing needs (e....	14
● Adults with mental health issues	16
● Adults with Court of Protectio...	17
● Children in need by reason of ...	20
● Children in need on some oth...	17
● Other	4



The areas a respondent said made up 50% or more of their workload are shown in the table below:

50% or more of workload	No. of respondents	Notes
Children and young people	6	Includes those in care, care leavers and young carers
Court of Protection	8	
Adult disability issues	7	Includes Care Act
Child disability issues	6	
Judicial review challenges	2	
Asylum seekers, refugees, migrants	1	
Adult Community Care	1	
Public law, education and Community Care	1	

Staffing

Most respondents were working in relatively small teams with 2-4 solicitors and 2-4 paralegals/ trainees. A few noted that people in their teams were not full-time or combined working on Community Care cases with other areas of law.

Legal aid sustainability

- All but one of the respondents (96%) said that legal aid was not sustainable. The one person that did say yes said that the majority of their work was done in the Court of Protection – “*which can go straight onto a legal aid certificate bypassing legal help*”.

Reasons included the following:

- Legal aid work operates at a loss
 - The rates are not commercially viable / the hourly rate is not financially sustainable
 - Fixed fees for cases which do not require court proceedings are not viable
 - The LAA considers essential work to be non-chargeable
 - Where the main challenge in a Community Care matter is a complaint, this is only payable at the legal help rate
 - There is considerable pre-action work that is rarely recovered
 - There is a risk that they will not be paid for a judicial review case if it does not reach the permission stage, and most cases are resolved before that
- Practitioners have to subsidise legal aid with private paying work / take on work with better remuneration / trust and foundation funding (NFP sector)
- The delays in being paid for legal aid work makes it unsustainable

- One or two reported trying to make legal aid pay by taking on more cases and working longer hours. In the light of the other evidence we have gathered, this is unlikely to be successful⁴¹ and is more likely to lead to problems with well-being
- The unsustainable nature of the work means that solicitors are having to work too hard and get burnt out

Turning work away

No-one reported that their organisation had stopped providing Community Care advice / representation to adults with disabilities eligible for support under the Care Act 2014.

19 respondents (83%) said that they regularly had to suspend new referrals, reasons included:

- The team was at maximum capacity on existing cases
- Being in a small team and having limited capacity anyway
- Having to practise across other areas of law in addition to Community Care
- Not having enough competent junior staff

Appendix 5 - One to one interviews with practitioners

In addition to the online survey, we conducted one-to-one interviews with nine practitioners from a range of NFP, private practice and university settings and a legal aid practitioner who had moved to a local authority. We agreed that organisations and individuals would remain anonymous.

Questions are set out below, followed by a summary of answers grouped by theme.

Casework profile questions

1. Please could you tell us roughly how many Community Care cases you personally take on in a year? Please could you give us a breakdown of the types of cases you take on? (Use the same case types that we used in the survey). Is this the same for all of the caseworkers in your organisation or do different caseworkers do different types of cases?
2. Would you do more of a particular type of case or take on areas which you don't generally do if you could? What would make a difference? If they mention a number of factors – ask what would make the biggest difference?
3. You mentioned that you sometimes need to turn cases away due to capacity. Could you tell us how you decide which cases to take on? E.g. is it on a first

⁴¹ Where work is funded under legal help fixed fees, unless work on the case reaches the escape threshold of 16 ½ hours, doing additional work on a case just depresses the hourly rate, once it passes 5 ½ hours.

come first served basis, or do you prioritise certain types of cases over another, and if so why (prompts if needed – expertise within the team, funding constraints etc.)

Recruitment and retention

4. We are interested in finding solutions to the challenges in making and maintaining a career in Community Care. How easy is it to recruit people with the required expertise?
5. We want to know more about retaining the right people. Is it difficult retaining staff with a focus on Community Care work? [If interviewee doesn't mention any of the following then ask specifically about them:
 - a. rate of pay,
 - b. fee earning pressures,
 - c. reporting pressures,
 - d. pressure associated with working with clients in crisis who are/have experienced trauma]
6. What are the three changes which, in order of importance, would have the biggest impact on recruitment and retention?
7. Do you find it any more difficult to recruit and retain Community Care caseworkers compared to other areas of work? How does your organisation provide training and career development opportunities for people doing Community Care?
8. Are there any particular issues recruiting and retaining practitioners who are qualified as legal aid supervisors?
9. If yes, do you have any views on specific solutions to this problem?
10. What difference would these changes make?
11. Is there anything else you would like to discuss?

One-to-one interviews with practitioners – responses

Responses have been grouped under the following themes: career, supervision, caseloads, money, vulnerable client group in a broken system, practitioners leaving.

Career

The responses from practitioners mirrored those from law students:

- There is a lack of awareness of Community Care as a career choice in Universities
- Many respondents told us Community Care is a developing area of law so rewarding for 'geeky lawyers' as well as those motivated by helping people; but aspiring lawyers are not aware of this
- Some reported that students are being steered away from legal aid
- There were fears that the SQE could make qualification more difficult for those from excluded communities. It has been noted that whilst the total cost of qualifying under SQE may be lower in some situations, the unavailability of student loans for large parts of SQE is a real barrier to social mobility. In addition, the cost of sitting the exams is not included in any of the courses and therefore candidates must have almost £4000 available to pay up front.⁴²
- A significant number of practitioners tend to leave Community Care practice when they are considering buying a house and/or having children; often they will be qualified, experienced and likely to meet supervisor status.
- There is a lack of experienced practitioners compared to the demand for services.

Supervision

Many respondents said that it was difficult to find people who would enable their organisation to meet the LAA's supervisor requirements. Reasons included:

- It is difficult for Community Care practitioners to meet LAA supervision standards since the LAA stopped allowing people to supervise public law and Community Care and count as a full-time-equivalent supervisor in Community Care
- There is no difficulty with the knowledge required but having to do the range of specified cases within a time period is difficult
 - This impacts particularly on people working part-time, people with caring responsibilities, parents and people with disabilities
- The more time is required for supervision of inexperienced staff, the less time is available for casework, this adds to pressure
- Legal practices use a technical model of supervision rather than a therapeutic supervision model, which may also be needed in Community Care

Caseloads

Practitioners were mainly working in small teams of solicitors with trainees or paralegals. No-one specialised in a particular area within the LAA category of Community Care, caseloads tend to be mixed.

⁴² For more information see YLAL's SQE hub <http://www.younglegalaidlawyers.org/sqe>

- Almost everyone mentioned the need to create a ‘balanced caseload’ because legal aid on its own is not financially sustainable in any of the practice contexts we surveyed
 - This means supplementing Community Care work with private paying work or trust and foundation funding, and/or concentrating on legal aid work that pays at better rates
- Most practitioners carry small caseloads compared to demand
- Most practitioners said they regularly had to suspend acceptance of referrals

Money

All practitioners said that ‘core Community Care’ legal aid work is not sustainable on its own:⁴³

- Everyone we spoke to said Legal Help is not financially sustainable
- If legal aid funded – there is a risk that you spend a lot of time on Legal Help which does not pay for the work involved
- Court of Protection work (which falls within the LAA’s Community Care contract category; but is not regarded as ‘core Community Care work’) can make a practice sustainable but means there is less time for ‘core Community Care’ cases
- Public law challenges (at least PAP letters) can secure good outcomes for clients but work is at risk if you don’t reach the permission stage

A vulnerable client group in a broken system⁴⁴

A number of practitioners described the particular challenges of working in this practice area:

- Rights under the Care Act are difficult for people to understand so people generally do not recognise that they have a ‘Community Care’ problem. The term ‘Community Care’ is not well understood outside legal aid circles and does not assist in raising awareness of rights in the wider community. One practitioner said that they refer to ‘*Help to get support from social services*’, when developing material to be used on their website and in other materials
- Local authorities have an incentive to delay and commission outsourced services rather than bespoke for the individual
- People requiring Community Care services need an ongoing relationship with the local authority
- Court of Protection and public law remedies cannot always deliver the outcomes people need

⁴³ That is cases concerning rights under the Care Act 2014.

⁴⁴ We believe that people are not disadvantaged because of their disabilities but because they have rights that are being infringed.

- A Tribunal system appears attractive on one level but there are concerns – legal aid could be less available than it is now as representation in tribunals is generally not in scope
- Without equality of arms, a tribunal system could be worse than the existing system

Practitioners leaving

Practitioners reported that a significant number of colleagues had left Community Care, various reasons were suggested for this:

- Poor rates of pay meant that practitioners often leave at the point where they want to buy a house and raise a family
- Some people suggested that working with vulnerable clients experiencing a broken system can contribute to burnout (but not everyone thought this)
- Some people mentioned the bureaucracy of dealing with the LAA and a lack of understanding of Community Care by LAA staff

Appendix 6 - Online undergraduate law student survey and roundtable discussion notes

Online student survey

The questions we asked are set out below. We agreed that individuals would remain anonymous. Although the number of respondents was low (9), the results were interesting and show that universities have a very important part to play in raising awareness and facilitating the start of a potential career path.

Eight of the respondents were aware of many of the types of legal problems which fall within the LAA's definition of Community Care law. Seven of them became aware of Community Care law because they volunteered at a pro bono clinic, and one mentioned it was because of an elective module on their degree. Seven also said they were interested in exploring Community Care as a career option and two said they 'may be' interested. Six said they had found out information about Community Care as a career through their university; one said they had found out information online and only one said they had not been able to find information.

1. A range of Community Care client groups are eligible for legal aid advice and representation. Which groups did you know could access this?
 - Adults with disabilities eligible for support under the Care Act 2014
 - Migrants seeking support under the Care Act 2014 and/or the Children Act 1984
 - Adults with housing needs (e.g. support under s17 Children Act 1984 for families found to be intentionally homeless)
 - Adults with mental health issues
 - Adults with Court of Protection issues
 - Children in need by reason of a disability
 - Children in need on some other basis, including children in care and leaving care
 - All of the above
 - None of the above

2. If you are aware of legal aid being available to any of the above client groups, how did you gain this awareness? Please select as many as apply:
 - Came across a relevant case via the media
 - Was an elective on my law degree
 - Through volunteering at a pro bono clinic
 - Other (please specify)

3. Are you interested in finding out more about a possible career in Community Care law which is usually funded through legal aid?

Yes / No / Maybe

4. If no – why not? Please select as many as apply:
 - This area of law does not interest me

- The pay rate of Community Care work as it is mostly legal aid funded
 - Other areas of law come with training sponsorship
 - Other
5. If yes, have you done any of the following to explore your options? Please select as many as apply:
- Found information through my university
 - Found support through family or friends
 - Found information online
 - Have not been able to find any sources of support to explore my options
 - Other

Roundtable notes – Student awareness of Community Care, learning and development of junior staff

Optional modules / master's degrees

- LSBU had tried to put on Community Care optional modules and related master's degree courses; however they could not run them due to low uptake and lack of initial interest
- We spoke about combatting this by thinking about the creation of a 'social welfare law module', which would build upon those key skills learnt in administrative law modules and to try pick up people who have a general interest in social welfare / justice and get them interested from there
- One participant mentioned how Community Care law could be incorporated into human rights modules
- They also spoke about how they put on a legal issues module for first year, which gives some (albeit limited) exposure to this sort of area – weaving these issues into core modules might be more realistic / palatable
- A significant number of the lecturers at LSBU are ex-practitioners who have experience in these sorts of areas, which is less likely in Russell group universities.

SQE

- Concerns were raised about how the SQE will further limit access to careers into social welfare / justice due to the limited exposure to these areas on the exam curriculum
- Especially if you come from a non-law degree doing the SQE
- Noted that the SQE is felt to be a "conveyor belt into city law" due to its focus around skills and knowledge beneficial for commercial practice in contrast to other areas.
- As such, there is little incentive or exposure via training to get into any type of social welfare law discipline.
- It was also noted however that there is scarce material on social welfare law in the GDL or particularly on the LPC either.

Gaining exposure

Law clinics

- Law clinics can appear to students as pro bono work that's only done for free on an ad-hoc basis rather than a viable career choice.

Law fairs

- Universities charging for a table at law fairs made it particularly difficult / unviable to get there and give students that initial exposure
- Legal Cheek's virtual vacation schemes offered nothing to do with legal aid until YLAL complained

Opening doors via work experience

- Time consuming and difficult to find suitable work and supervision to volunteers – there just isn't the resources to offer it
- Law clinics are overwhelmed with student volunteers but, as such, this makes offering meaningful work experience difficult – and therefore this doesn't give the best picture to students

Partnering with Statutory Care Act Advocates

- Despite not being legal professionals, these people are working very closely with the Care Act on a daily basis. All local authorities need to have them. They are overwhelmed with applications and waiting lists for people to take on casework. Could funding be found to make this a viable option for student exposure? Could this work be recognised as QWE for SQE? However, it was mentioned that this may not be what the wider community count as 'good' work, and therefore may limit the amount of people who are just wanting to try a wide range of areas.

People who have practised in other areas first

- Some people move over into Community Care after working in areas such as personal injury; but this may relate to particular legal practices
- Almost two streams into Community Care – one being via the job market after people have had the resources spent on them in qualifying and the other being via work exposure and experience

Practitioner wide pressure

- YLAL are wanting to put pressure on all these sorts of organisations to try to create meaningful change; however they are only a small team with large workloads of their own. They are also limited in their contacts and influence as junior lawyers – there needs to be a campaign in partnership with senior lawyers

Appendix 7 - Practitioner discussion on why people leave Community Care

Rates of pay	Compliance and LAA	Burnout	Supervision: casework and therapeutic model
<ul style="list-style-type: none"> Firms cannot solve themselves Supplementing legal aid work with private work - a stop gap Short term solutions: ensure we are clear on what we are asking for an increase in funding for Public perception concern: asking for more money for lawyers Increasing legal aid rates may not have the same effect across all firms - different approaches as to where money would go May simply mean we are running at less of a loss, wouldn't solve every problem Reframe this - vital funding for the retention of lawyers protecting the most vulnerable. Society needs the sector: continue to demonstrate importance of this Huge crossover with wellbeing but for many lawyers, without the other wellbeing issues, pay may not put them off 	<p>Feeling that less than 40% of time goes on the geeky lawyering- the bits we want to do.</p> <p>Firms who are consistently meeting compliance requirements: can we loosen the reigns - can we look again at these ongoing requirements</p> <p>Discussed previous risk ratings system at LAA - if you kept to KPIs and things ran smoothly, LAA resources on compliance checking were focused on providers who had more obvious need for support and scrutiny- it focused LAA resources</p> <p>This ties in to potentially reducing administrative costs for LAA</p> <p>Difficulty in LAA: not practitioners, have not run court cases.</p> <p>Trust: the need for a cultural shift - lack of trust in LAA and provider relationships, this is very wearing from the beginning of careers</p>	<p>Departments tend to be small: lack of peer to peer support</p> <p>Vicarious trauma</p> <p>Finishing times: not a 9-5. Client's problems are there 24/7, often not within working ours alone, often outside those. Crisis situations. Need for pastoral support on these issues.</p> <p>Impact on relationships, marriages, family</p> <p>Contrast this with magic circle firms: psychologists coming in to help with pro bono effects dealing with hugely traumatic issues- 99% work is commercial</p> <p>As a sector make clear we are all experiencing this together- it is unsustainable</p> <p>Humanise the lawyer - distinguish this work from commercial world work - public perception again</p> <p>Highlight the importance of the lawyer-client relationship: what impact do community care lawyers have on peoples lives?</p> <p>Day to day peer support: often not possible within firms but could we look at this</p>	<p>Noting that supervisors do not automatically get given a higher salary for being more experienced</p> <p>Day to day supervision to acknowledge wellbeing and burnout as a key barrier - keep this on the table. Document this as a sector.</p> <p>Offering pastoral support within firms routinely</p> <p>Vicarious trauma: in house psychologists</p> <p>As a sector make clear we are all experiencing this together- it is unsustainable</p>