



## Submission to the Review of Civil Legal Aid

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To – ‘Consult Justice or to the Review of Civil Legal Aid’

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This is a short summary of evidence to the *Review of Civil Legal Aid (RoCLA) Consultation*.

### About the submitter

I am an Associate Professor at Nottingham Law School and School Research Impact Lead. I am an international expert in access to justice and have been conducting research in this area for 30 years.

I am also an experienced legal practitioner having worked in both the private and public spheres.

I also have a background in policy. I am also an experienced researcher, legal educator, and impact evaluator in the area of effective service delivery and impact.

### Submission

1. The Terms of Reference (ToR) for this RoCLA in England, Wales, and Northern Ireland are not broad enough. As a result, responses are likely to be diminished and too narrow. Its focus is on the fiscal concerns. This ignores broader aims of access to justice and what a good civil legal aid system looks like. This makes it hard for the Review to ensure successful inroads into addressing civil legal aid need. The broader underpinnings as to why civil legal aid is critical in society, given the everyday problems that people face that are often capable of a legal solution through timely civil legal aid support, is missed. The link between *equality before the law* on which the rule of law and integrity and legitimacy of the State reside are not addressed or mentioned in the ToR. These remain the hallmarks of good democracy. If the State passes laws, it needs to ensure people can understand them and action what is required for them to have the protection of the law or to address poor practice.
2. The legal aid system in England, Wales, and Northern Ireland is broken and entrenching inequality. To use a medical analogy, it is haemorrhaging. No



amount of band aids, 'bolt-on-s' or quick fixes, as have been tried, will stop it from bleeding.

3. The legal aid system needs a total redesign informed by the significant body of research that repeatedly make recommendations based on evidence but which is largely ignored (see paragraphs 4-13 below).
4. People who are experiencing disadvantage have often multiple, cascading, and intersectional legal problems that sit in other contexts (which include social and economic deprivation) ([Pleasence et al, 2004](#)). Legal capability ([Balmer et al, 2024](#), 9; [Pleasence et al, 2014](#), 123-4) is poorly understood and as a result funding and policy continue to miss the mark. The research also says that access to justice is also problematic not only due to cost, unavailability, and the fragmentation of the current civil legal aid system but also because trust levels in the law and authorities are at an all-time low ([Zhao et al 2023](#)).
5. The reason for the very existence of legal aid is due to market failure. It is a recognition that the market has not been able to provide for those who are poor and cannot afford legal services. Looking to the market for solutions is problematic firstly, as civil legal aid exists, in the first place, due to a failure of the market, thus giving rise to the need for proper government funding and support for legal assistance. Secondly, because market solutions are often designed for the market, even if recalibrated, they are not sophisticated enough to deal with the issues that the research consistently shows is complex and which cause diverse advice seeking behaviour. Legal capability is poorly understood and as a result funding and policy are missing the mark.
6. The current civil legal aid system is ineffective and inefficient ([National Audit Office, 2024](#)). The focus is too often on austerity and cutting or streamlining services. This leads to downstream costs and impacts in other areas of government endeavour such as health and social services ([Balmer et al. 2006](#)). There is thus inefficiency and downstream impacts. A recent study in Australia commissioned by National Legal Aid looks at downstream saving legal assistance services working in collaboration with a shared vision can provide ([Price Waterhouse, 2023](#)).
7. The governance structures that are currently in place, including the Legal Aid Agency and the role of the Ministry of Justice in making decisions around the funding of legal aid cases should be arm's length. Statutory independence and Boards equipped to make informed decisions based on the evidence are required. This is fundamental as it goes to the importance of the separation of the legal system from the political realm. Currently, the two are not separated



sufficiently and independent funding decision on grants of aid reside to closely within the Ministry of Justice through the Legal Aid Agency (LAA). The LAA currently has no mandate around access to justice or meeting unmet legal need in its Memorandum of Understanding with the Ministry. This is contrary to good governance and is a conflict of interest, particularly, in many legal cases which also involve the State or its entities.

8. The LAA focus is problematic and administration and micro-management leads to a use of resources that might be better used to fund direct civil legal aid service delivery. ([National Audit Office, 2024](#))
9. The civil legal aid system is not responsive as it tends to focus on 'one-off' which is inadequate, short sighted and lacks an underpinning strategy. This is also evidenced by the recent National Audit Office's review. ([National Audit Office, 2024](#)) For example, having had a 'one off' advice that advises a client may have a legal claim gives false security if, after such advice, there is often nowhere for the client to then go for legal support to access such rights or ensure rights adherence. There is also no consistently kept national data which examines the 'turn away rates' after a client have a one-off advice from the agencies that they are referred to. There are however some efforts to gauge this by third sector agencies. ([Public Law Project, 2023](#)).
10. There is a dearth of impact evaluations as to the pathways for disadvantaged members of the community to gain legal help and whether this help is obtained and whether the impact of interventions has a positive impact. This needs to be undertaken so that reasons as to good and bad practice can shape reflection and improved service to the public. This goes to effectiveness, good and accountable practice, and efficiency.
11. There is also a huge assumption in the current civil legal aid model, rebutted by all the research, that people can identify that they have a problem capable of a legal solution in the first place and that they will turn to legal advice for support. The research is clear that large numbers of members who are disadvantaged in the community are unaware of their legal rights in the first place. As a result they do not present to advice agencies for legal help ([Curran, 2021](#)). In addition, many of the support services, where they exist, are not aware that many of the clients' problems might be capable of a legal solution. This is an area of neglect and there are models that can address this ([Curran, 2022a](#)).
12. Currently, services are splintered and siloed, and this leads to exhaustion both of those who try and deliver the services to the public and the public themselves.



13. Why is it important to have a good and holistic civil legal aid system? By not gaining legal help (and assistance in identifying legal rights earlier and in a holistic way) problems escalate, harm is caused, and there can be a significant public waste of resources. This is exemplified in the sub-Post Masters scandal in the United Kingdom. At so many junctures, if these members of the community had had early legal support, outcomes could have been significantly different. ([Curran, 2024](#))
14. There are better models of tested an innovative service delivery ([Curran, 2013](#)) utilising and valuing the role and expertise of the third sector, but this is overlooked. Holistic, problem-solving approaches, early intervention, and pathways through integrated, joined up service delivery for full legal and other support are key ([NTU, 2022](#)). Australia for example offers a good model ([Curran 2022b](#)) with its 'mixed model' in contrast to the [judicare model](#) in the UK.
15. A responsive civil legal aid system will require a deep root and branch reform and re-envisioning of civil legal aid backed by statutory requirements for access to justice. It will require a vision that is driven by the public benefit, and which is properly evaluated and accountable.
16. A culture of respect between all the essential players in delivery has been lost and needs to be rebuilt. This will take time and the building of trust. Key principles of good collaborative practise are needed with a refocusing on the common good by all parts of the civil legal aid system that centres the importance of equality before the law which is so important to the rule of law and confidence in systems of Authority. This is the basis of good democracy and the social contract between the State and the individual.

## Conclusion

17. In the current legal aid system, the poor and disadvantaged are being left behind. They are increasingly being offered a low quality two-tiered system of justice. Whilst taxes are spent on repeat players who are often powerful and well-resourced and have access to the best lawyers and the courts others are missing out. Proposals to force the poor into Alternative Dispute Resolution mechanisms and digital forms such as the Court Reform Processes (that do not factor in impediments and power imbalances) may not be appropriate or in the public interest if there is poor practice that is being exercised. Why is it that some sections of the community who are powerful and influential should have a different level of access to courts and consume resources for lengthy cases and it is the poor and vulnerable who must struggle. The research is



telling us that these people are just giving up on their legal rights as the system is designed to defeat them and treats them as less deserving.

18. It is time for change. A serious reconsideration is needed of the total legal aid landscape to improve civil legal aid in its design. A design that should be responsive and human centred as well as humane. Such a system would be much more effective, tailored, and efficient. It would also be cost effective. I am happy to help in the redesign that is informed by such research and evidence.

19. There is so much undervalued goodwill, dedication, and a sense of vocation from so many that is keeping this broken system going. These dedicated services and people are exhausted. Half-baked quick fixes grafted onto the existing system are never going to work until the issues raised in this submission are addressed. The solutions are there ([Curran, 2022](#)). What is needed is a genuine attempt to address these.

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