

Submission to the UK Parliament Public Accounts Committee – Value for Money from Legal Aid

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To Chair

(2666 words)

This is a short summary of evidence to the **UK Parliament Public Accounts Committee**

About the submitter

I am an Associate Professor at Nottingham Law School, Nottingham Trent University 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 effective service delivery and impact.

A submission was also provided to the current Review of Civil Legal Aid on 13 February 2024 but aspects, references and considerations in this submission are different due to the difference in inquiry and broader considerations of this Parliamentary Inquiry.

Submission

Introduction and Summary

1. Whilst understanding that this inquiry is examining ‘value for money from legal aid’ it is important to note that cutting funding or recalibrating eligibility with less people eligible for legal aid as the Ministry of Justice has done whilst it may save money in the short term has significant flow on effects in terms of ‘cost’ fiscally and flow on cost in other areas, it also has a ‘cost’ in its toll on health, wellbeing, housing, income support for people. It is important though to remember legal aid is not merely about ‘value for money’ but its important role in a democratic society and so a properly funded and sustainable legal aid system is critical.
2. Whilst this submission celebrates the Head of the National Audit Office Gareth Davies recent report ([National Audit Office, 2024](#)) on the government's management of legal aid and endorses many of its conclusions, this evidence seeks to stress that all the solutions do not rest merely on economic or monetary measures.

3. There are a range of other strategies that are necessary in addition to proper resourcing which rarely gain attention, but which are supported by evidence, evaluation and with experiences in other jurisdictions of different models such as the mixed model in Australia (see below) and with success.
4. If the UK parliament is going to pass laws, then they must also consider the flow on effect for people to obtain proper advice on the impacts of such laws on the individual circumstances. This is critical in any discussion of access to justice. The approval of legislation by Parliament requires there be a concomitant obligation to ensure that subjects are also able to understand those laws, know their rights, have capability and resourcing of the legal support necessary to exercise these. Such as the current consideration of the *Illegal Migration Act 2023* Which as the author has written elsewhere, based on the evidence is likely to lead to failed policy at great cost. ([Curran and O'Nions, 2023](#)) The link between *equality before the law* on which the rule of law and integrity and legitimacy of the State reside are important considerations for a Parliamentary committee of this nature even though it is concerned with wise public expenditure which as the National Audit Office report shows is not evident in the case of legal aid.. 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.

Value for Money and Implications of Poor Resourcing and the Broken Legal Aid System

5. Legal aid exists in the first place as an acknowledgement that there are certain sections of the community who just are locked out of a private legal service market.
6. 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.
7. 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 7-15 below).
8. 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 most importantly today, because trust levels in the law and authorities are at an all-time low ([Zhao et al 2023](#)).

9. As noted above 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, 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 ([Balmer et al, 2024](#)) and as a result funding and policy are missing the mark.
10. 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 therefore 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](#)).
11. 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. 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 too 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.

LAA's data is poor (as is the Ministry of Justice), and its systems outdated, clunky ([National Audit Office, 2024](#)) There are problems with LAA transparency and micromanagement of contracts which is in itself inefficient and not value for money as this money could be spent on legal aid services. There are better models which are statutory and involved in public direct provision of legal aid in civil and criminal law and engage trust-based management of legal aid grants and outcomes measurement frameworks. ([Victoria Legal Aid a](#)) 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](#)). There are other alternative models that are efficient and effective and value for money ([Victoria Legal Aid b](#) and [Community Legal Centres Australia, 2006](#) and [Community Legal Centres Australia, 2023](#))

12. 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](#)).
13. 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.
14. There is flawed 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](#)).
15. 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.

Getting value for money and reducing community harm

16. 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](#)) In terms of 'value for money' this article ([Curran, 2024](#)) highlights the savings that could have been created because of a properly funded, connected and systematic legal advice and support early on. The flow on effects for the individuals and the massive amounts spent on courts, lawyers, prisons, appeals, public inquiries, and government in having to make compensation and redress payments has and

will be costly and is not 'value for money'. If the legal aid system in the United Kingdom was more holistic and connected and provided services to people addressing all their multiple legal problems in one place, and providing early advice and joined up services, the outcome can be very different.

17. Mixed models of service delivery such as that in Australia, have a greater capacity to identify people with similar problems with the laws in their administration. Action can then be taken so that problems do not escalate, and unlawful activity identified and named with strategic action. This included connecting the legal case work with improvement of policy and building public understanding ([Curran 2015](#)). Such models have a track record of resolving matters much earlier than was the case in this sub postmasters' scandal.
18. 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.
19. Outcome measurement is critical if you wish to assess value for money and effectiveness. There are models of this again in Australia. It would be also not be value for money to re-invent the wheel when there is work already done on this and this should be explored and adapted appropriately to the UK context ([Victoria Legal Aid](#) and the [Legal Services Board and Commissioner Victoria](#)).
20. A responsive 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. It needs also to be human centred given complex lives (as discussed in the research above cited) rather than driven by agencies unconnected to lived experience. Some of the models mentioned in this evidence support and ensure policy and funding are better connected to such lived experience leading to tailored, targeted and more effective and efficient outcomes.
21. A culture of respect between all the essential players in delivery has been lost and needs to be rebuilt ([Zhao et al 2023](#)). 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

22. 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. People are losing hope.

23. 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.

24. 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.

Dr Liz Curran SFHEA, Solicitor (non-practising)

Associate Professor Clinical Legal Education and School Research Impact Lead,

Nottingham Law School

Nottingham Trent University

E Liz.Curran02@ntu.ac.uk

W: <https://www.ntu.ac.uk/staff-profiles/law/liz-curran>

ORCID ID 0000-0002-6371-2975

<https://scholar.google.com/citations?user=U8danSwAAAAJ&hl=en>

<https://au.linkedin.com/in/dr-liz-curran-2583591a8>

<https://www.routledge.com/authors/i20976-liz-curran>

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Nottingham Trent University | 50 Shakespeare Street
Nottingham | NG1 4FQ