



The Bar Council

# **System overload:** a report on family legal aid

December 2025

# Foreword

**In 2001, the ‘fat cat’ lawyer trope was born and hurled at legal aid lawyers. It’s a myth that has prevailed ever since, and yet when you read this report, you will see that it could not be further from the truth.**

The Bar Council’s family legal aid project has examined the changing conditions of work for family legal aid barristers. We’ve spoken to 100 family barristers who have candidly shared the significant impact publicly funded work is having on their working lives and work-life balance as well as how underfunding affects the justice outcomes for their clients.

Over the past three decades, the only attention paid by the government to family legal aid fees has been to cut them. Fees have consequently eroded and are now worth around half what they once were. This has resulted in a significant worsening of remuneration and working conditions for family barristers, which risks compromising their ability to support extremely vulnerable clients at some of the most stressful moments in their lives.

Barristers have been left unable to pay their bills, meaning they are forced to take on more work and more hours than is sustainable in order to support their livelihoods. One barrister who is more than a decade into her career told us that she took home just £7 an hour for a piece of work that took her 15 hours. This is unacceptable. Rates of remuneration are now so low that some barristers feel it’s untenable to sustain a publicly funded practice with many saying they once expenses are deducted, some pieces of work are essentially done for free. This disincentivises the profession from taking on legal aid work, meaning people are not getting the representation they desperately need.

The working conditions themselves are also having a detrimental impact on barristers. Some courts lack basic facilities like drinking water or somewhere to wash your hands. Barristers do not have conference rooms to speak to their clients or if they are ‘lucky’ enough to have one, it’s not unusual to be able to hear the conversation in the neighbouring room. This only compounds the pressure barristers are under when they are dealing with cases of the utmost sensitivity.

The family court hears cases dealing with all aspects of human existence; they are, it could be said, the court of life itself. It is where parents are told they will lose contact with their children and domestic abuse victims face their abusers. The very real impact the financial and systemic pressure is having on barristers’ health and wellbeing, made plain in this report, is extremely alarming. We cannot go on tolerating the people working within the system collapsing.

We are very grateful to the barristers who took the time to share their experiences with us for this report. Without you and your experiences, we would not be able to paint such a stark and vivid picture of where we are today. We also want to say a huge thank you to the Family Law Bar Association leaders, James Roberts KC and Leslie Samuels KC, and their members, particularly Shiva Ancliffe KC, who were incredibly generous with their time and candour.

In 2018, the President of the Family Division Sir Andrew McFarlane made the point while the system may be able to grind on, it is the people within it who may collapse or fall over. That was 7 years ago. It cannot be another 7 years before we see real change.

We need the government to invest in the court estate and improve the conditions in which family barristers are expected to work. We need to see an increase in rates, and a commitment to updating and maintaining the fee schemes including an independent fee review body. Improvements can be made now to bring the system back from the brink, before access to justice is further compromised.

**Barbara Mills KC**

**Chair of the Bar Council 2025**

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# Introduction

**The Bar Council is the voice of the barrister profession – representing and supporting the nearly 18,000 barristers in England and Wales, and championing the rule of law and access to justice.**

We've spoken with 100 family barristers to better understand the working lives, challenges and issues faced by those at the family Bar in 2025. We found a group of people extremely dedicated to their work, but on whom the pressures of a dysfunctional working environment are taking a severe toll.

The issue first and foremost is around remuneration. Fees have eroded to approximately half their value in the 30 years since they were last revised, and the changing nature of work over that period has not been (re)considered within the structure of the schemes. The lack of attention to remuneration has meant that barristers are working extremely long hours under considerable stress and, for some, financial strain, knowing that much of the work they do will be unpaid.

In response to both dwindling remuneration and more pressure on the courts, barristers have had to increase their case volume and work longer hours. The types of evidence most frequently considered has changed to incorporate digital evidence, and bundles of documents can be thousands of pages long. In addition to this, the lack of investment in the whole family justice system, including court facilities, money for solicitors, and support for families has meant that the pressure on barristers has increased.

The impact on barristers has been profound. Long and antisocial working hours have become normalised, with many routinely working 70-hour weeks including through the night. The strain of fighting for justice for clients when the decision to properly represent them is to directly undermine one's own ability to have a reasonable working life takes its toll. Many speak of exhaustion, burnout and a need to do less publicly funded work to make their working lives more tolerable.

We would like to see fair and reasonable working conditions for barristers considered as part of a sustainable workforce planning strategy. If we create a system where self-employed barristers are not able to maintain a decent working life, they will over the long term move into other areas of work. Furthermore, inadequate remuneration may make it difficult to recruit new members of the Bar to family legal aid. Those who will ultimately lose out will be those members of society in need of quality legal representation in the family courts.

# Executive summary and key findings

There is a considerable amount of commitment and dedication at the family Bar. Barristers are prepared to work long hours and shoulder additional work to ensure they deliver quality legal representation for their clients. Many barristers are willing to go above and beyond to ensure their clients' interests are best served. Many who work in this area are enthusiastic about the intellectual interest and social importance of their jobs. Barristers are sincere and animated when they describe their work:

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It's one of the few areas of law that looks forward as well as backwards and so the traditional notions of application and remedy don't apply.

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Everybody is just desperate to get the work done and it's not for the money; it's for the children and the families that we're working with. And that might sound a bit corny, but it's true. And you can visibly see it and feel it when you do this area of work.

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I genuinely believe that it serves some sort of social utility. I don't think every case we do ends up in the best possible result for a child or a family, but some of the cases do and that, in my view, makes it worthwhile.

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The judgments handed down in the family courts have profound and long-lasting effects on families and individuals. As Sir James Munby, when he was President of the Family Division of the High Court, said in 2013: “Orders of the kind which family judges are typically invited to make in public law proceedings are amongst the most drastic that any judge in any jurisdiction is ever empowered to make. When a family judge makes an adoption order in relation to a 20-year-old mother's baby, the mother will have to live with the consequences of that decision for what may be upwards of 60 or even 70 years, and the baby for what may be upwards of 80 or even 90 years.”<sup>1</sup>

## References

1. Speech by Sir James Munby as President of the Family Division and President of the Court of Protection at the Annual Conference of the Society of Editors 'Freedom to Inform' in London, 11 November 2013.

We do not consider that the social importance of this work is reflected in the (lack of) attention paid to fees over the last 30 years. As the National Audit Office (NAO) has identified, fees for civil cases have not increased since 1996 – almost 30 years. There has been no increase for inflation, and the Ministry of Justice reduced fees by 10% in 2011/12 as part of a drive for ‘austerity’. This 10% reduction was never reinstated. In real terms, this means fees are now approximately half their value in 1996.<sup>2</sup>

Our concern as the representative body for barristers is that the erosion of the value of the fee scheme has forced material changes to the working patterns of barristers and the functioning of the family justice system. After criminal barristers, family barristers have the longest working hours at the Bar, with 20% working more than 60 hours a week. Barristers working in family law have significantly lower overall wellbeing compared to most other practice areas. This has implications for the sustainability of the legal services market, and for access to justice for those with legal need.

The Review of Civil Legal Aid (RoCLA) has been reviewing options for improving the long-term sustainability of the civil justice system.<sup>3</sup> We have submitted a full and detailed response to the review process and await further engagement around outcomes and measures for implementation.<sup>4</sup> Our data analysis submitted as part of the review highlighted specific challenges around financial sustainability of legal aid. We found that, due to the failure to invest in legal aid, barristers who do publicly funded work are now directly financially disadvantaged compared with colleagues who do not. We found that the more legal aid work a barrister does, the less they earn. As we set out in our RoCLA submission: “Each 1% increase in legal aid (as a proportion of fees) reduces total fee income by £611. So that says that moving from say 40% to 50% legally aided work reduces total fees by £6,110 on average.”<sup>5</sup>

Over time, this acts as a disincentive for practitioners to choose legal aid work over private work. In this report, we seek to investigate among other matters how this disincentive is playing out in barristers’ decision making. There are, in the main, two types of legally aided work for family practitioners. Public law care proceedings are initiated when a local authority takes a case to court to consider asking for a child or unborn child to be taken into care or to be subject to a supervision order. If a case of this type comes to court, the local authority, the parent(s) and in some instances the child are likely to be represented by barristers. Private law cases typically arise when parents or other family members cannot agree about arrangements concerning a child or family matters after a relationship breaks down. There will also be applications for protection from domestic abuse under the Family Law Act 1996, financial remedy applications where, unusually, one or both parties have the benefit of legal aid and assorted other applications including under the inherent jurisdiction of the court.

## References

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2. National Audit Office report **Government’s management of legal aid**, 7 February 2024.
3. **Review of Civil Legal Aid - GOV.UK**
4. **Review of Civil Legal Aid – Call for Evidence, Bar Council response**
5. **Bar Council data analysis: Review of Civil Legal Aid, the family and civil legal aid Bar 2015-2023**

## Background on fee schemes

Our central consideration regarding legal aid is the way in which the fee schemes have been neglected, meaning both that the rates of pay are too low, and the changing nature of the work is not accurately reflected in payments made. The post-LASPO (Legal Aid Sentencing and Punishment of Offenders Act 2012) landscape around legal aid, where the scope of family legal aid was significantly cut, is one in which access to justice has decreased and the working conditions for barristers have deteriorated.<sup>6</sup> The scheme under which family legal aid lawyers are paid has changed only twice in the last 25 years and on both occasions the effect of the change has been to reduce the remuneration paid to the family Bar.<sup>7</sup> Before May 2001 the fees paid for family legal aid work were based on fixed fees for more simple work, or else on hourly rates and work done for more complex work.

There are now three primary and concurrent fee schemes under which family barristers are paid. In May 2001 the 'Family Graduated Fee Scheme' (FGF) was introduced. It allowed counsel to submit claims for payment directly to the Legal Aid Agency (LAA), rather than via solicitors. The FGF still applies for some silks (King's Counsel) in some shorter cases, but junior counsel and solicitors are now primarily paid under the 'Family Advocacy Scheme' (FAS), which was introduced in May 2011. The rates for both FGF and FAS were cut by 10% when LASPO came into force in 2012.

If family cases are scheduled to run for over 11 days and do in fact run for 11 days or more, payments are made under the 'High Cost Family Scheme' (HCF), also known as 'Very High Cost Cases Scheme' (VHCC).

## Our research

For this report we spoke with almost 100 family barristers, 40 we spoke to through individual interviews and the rest through focus groups or via email.<sup>8</sup> We sought to understand the changing nature of working life, and how this impacted the personal and professional lives of barristers practising in this area. Inevitably, a portion of the discussions we had were centred around remuneration. But we were able to explore the lived experience of family barristers in depth, and how the nature of and payment for the work have had an impact on their personal lives.

We found family barristers extremely dedicated to their work, but ground down by the relentless pressure, and frustrated that their wellbeing and personal lives were compromised to prop up an overburdened family justice system. As one barrister who specialises in public law children work told us:

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**The only way we can keep the show on the road, in other words to safeguard the children who are at the heart of everything we do, is to work more hours for less money.**

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## References

6. See Annex III of [our data submission to RoCLA](#).
7. Ibid.
8. See full methodology Annex one.





The system is working beyond capacity and, as President of the Family Division Sir Andrew McFarlane said in 2018, it is those working within the system who pay the price: “Some have predicted that, if the current situation continues, the family justice system will ‘collapse’ or ‘fall over’, but, as I have said before, I do not think systems collapse in these circumstances. Systems simply grind on; it is people who may ‘collapse’ or ‘fall over’.”<sup>9</sup>

It is unsustainable to expect people to continue to do this work, so much of which is immeasurably socially valuable but does not have an easily identifiable monetary value, under the current terms and conditions. It is not reasonable to have a system which tolerates the people working within it collapsing. The bottom line is the fee structure needs to be updated and working conditions need to be improved.

The key themes emerging from the research interviews and focus groups centred around remuneration, working conditions and nature of work and wellbeing.

### Key findings:

1. Remuneration is now insufficient to support family barristers in maintaining a sustainable legal aid practice.
2. Working conditions and ways of working in the system are intolerable, and the fee schemes do not reflect the changing nature of work.
3. The financial and systemic pressures on family barristers are having a detrimental effect on their wellbeing.

### References

9. **Rt. Hon. Sir Andrew McFarlane, President of the Family Division, Keynote Address: “Crisis; What Crisis?” Association of Lawyers for Children Conference 2018, 23 November 2018**

## Our recommendations:

As the representative body for barristers, we argue that the work of family barristers in supporting some of the most vulnerable people in society through legal proceedings needs to be better recognised and appreciated.

As a short term fix, we are calling for an immediate increase in fees paid across the board. This would go some way towards ameliorating the erosion, by approximately 50% since 1996, of the value of fees paid for family work. We are also calling for immediate consideration to be given to funding the areas of work for which the schemes in their present state provide no remuneration.

In the medium term, the family fee schemes need wholesale review to make them fit for purpose. To avoid recurring problems, there should be a commitment to the establishment of an independent pay review body to ensure the regular review of the fee schemes.

We also recommend that public funding for legal representation is made available for all parties in all family proceedings in which domestic abuse is a factor.

The system in which family barristers work must be properly funded on a long-term and sustainable basis. This would require a fee scheme that recognises the complexity of the work that is undertaken, the tasks that barristers are required to undertake, and which increases in line with inflation. We would like to see reasonable working conditions embedded as part of the system design.

If the situation continues to deteriorate, it is only a matter of time before cases are compromised either through a shortage of suitably experienced counsel, or because building pressures mean the system is too inadequately resourced to function.



# Section one: remuneration

Key finding: Remuneration is now insufficient to support barristers in maintaining a sustainable legal aid practice.

## **Fees have not kept pace with inflation and the cost of living.**

The lack of attention paid to the fee schemes, linked to lack of investment in justice overall, was the biggest concern of the barristers we interviewed. Many of the pressures family barristers face can be linked to poor remuneration and to inadequate funding of other parts of the justice system or public sector, for example in maintaining court facilities.

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If I get paid, for example, between £380 and £500 for a hearing, I have to take a hearing everyday pretty much in order to have a standard of living bearing in mind we don't get paid for vacation or anything... Sometimes if I'm getting that much money for a hearing, I'll be up against someone who's getting £5,000 or £6,000 for the day and therefore they can take the day or two off before to prep the case in a way that I just can't - and that can't be right or fair

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I've had cases where I'm making the equivalent of someone who works at a supermarket... Previously, I couldn't afford to pay my bills. I couldn't. I had to borrow to pay my taxes, to borrow to pay bills. It's not enough money to live on. So that's why I use the private law work to supplement it.

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Returning to the Bar 20 plus years ago, it quickly became clear to me that I was being paid less by the hour than I was paying my cleaner and that is no disrespect to my cleaner whatsoever. It is very clear to me that we were not being paid properly then and we are certainly not being paid properly now.

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We have had no pay rises, including inflationary pay rises ever since we took these cuts and so that is a huge impact. So, it definitely does affect your quality of life. You've got to work harder for far less money. And we've got a court system which is in dire need of investments. My concern is that as a result of that we have vulnerable people who aren't getting the representation that they need.

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It is unacceptable for a publicly funded profession to have had no fee increase or index linking of fees for 30 years. Rates of remuneration are now too low to ensure a reasonable standard of living for those reliant on publicly funded work. This creates a clear disincentive for self-employed barristers to continue to do this work.

Junior barristers (barristers who are not King's Counsel) are, at the start of their careers, conscious of the need to build up a private practice, even if they would rather be doing mostly legal aid work:

The concern is that if fees are not revised upwards and kept up to date with index linking, working conditions will continue to deteriorate so that family barristers move away from doing legal aid work.

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**I'm trying to build more of a private paying private law practice up to a point. I don't want to end up doing that exclusively or indeed mainly, but really just to help cover the costs of doing the legal aid.**

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**The pressure of having to make a living means that family barristers are taking on more work than is manageable.**

Case volume has increased to compensate for lower fee income. Many of the barristers we interviewed were having to take on more and more cases, working ever longer hours, to keep their income at a sufficient level.

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**Because people aren't particularly well paid and there's no regularity to the income people feel like they've got to work harder because they're earning less. So, the way that you maintain any trajectory of feeling like you're progressing at all is to do more work. So, you pile on more and more work in order to be able to earn that bit more, but of course that has a consequence on wellbeing and you see that for example a well-known family barrister died last week of a heart attack. Well, what's the point? You're in your 50s, you work very hard, you've died of a heart attack. There's no consolation to his family or friends that that he worked very hard. The stress is playing out barrister by barrister.**

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The increase in case volume is the inevitable consequence of the stagnation in fee income/reduction in fee value. The only way people can earn more is to take on more work and work longer hours, with the only natural limit being their own breaking point. Understandably, judges become frustrated when written documents are filed late or when barristers are trying to juggle more than one hearing in a day. However, these are symptoms of the poor level of funding for each case causing barristers to take on more work than is desirable or even manageable.

Barristers we interviewed told us the decision over whether to take on more work is not entirely linked to finances. There are also pressures from solicitors, the courts and chambers to take on cases and a barrister's sense of duty to meet the demand for their services. There are also barristers acting in the best interests of especially vulnerable clients, which can involve more time communicating with and working with them than is paid for.

### **Family barristers are not paid fairly for the hours they work.**

The payment rates for certain tasks are wildly out of step with the realistic time it takes even experienced advocates to carry out those tasks.

Several barristers reported that fee schemes only allow for two meetings with their client ('conferences') or two meetings of all the legal teams outside of court hearings ('advocate meetings') to be claimed for. However, the needs of the client and the directions given by the court may mean that more conferences and advocates' meetings are necessary, and they have to be undertaken by the advocates without remuneration.

An experienced barrister of 15 years' Call recorded the time he spent in communication and preparation for a one-day final hearing. It was over 20 hours, meaning his hourly rate was under £30 an hour. That rate is not the equivalent of net earnings. It is a gross figure from which the barrister has to pay for their office costs, travel, professional indemnity insurance, income tax etc.

Another barrister of 12 years' Call was asked by the judge in a case to prepare a skeleton argument. This took around 15 hours, for which she would be paid £105.

When counsel try to put parameters around their working days, it becomes extremely complicated. Meetings arranged for immediately after court hours, for example, can be particularly difficult for parents as they are scheduled just at the time when children need to be collected and often over-run.

In order to get just outcomes for their clients through the justice system, barristers need to work long hours, and the time needed to do this work does not reflect the time that is funded.

### **Disparity between private and legal aid rates creates imbalance in individual practices and legal provision.**

The work involved in a given case is very similar whether the client is privately paying or legally aided, but interviewees told us private fees can be significantly higher than the publicly funded amount.

The most poorly paid cases once you consider the hours involved tend to be publicly funded private law cases, or care cases in which the bundle (the legal paperwork for the case) includes very often many thousands of pages of digital disclosure.<sup>10</sup>

A family barrister whose practice involves a mixture of private and legal aid work described a case where she had spent 4 days preparing for a legal aid case relating to sexual abuse within a family. She would have been paid the same for a half day private law hearing involving a straightforward dispute about child arrangements.

### **References**

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10. **Civil Legal Aid (Remuneration) Regulations 2013 Schedule 3 part 2.** Private law children cases under FAS has the lowest rates. For instance, hearing unit 1 in the family proceedings court is £62.69 per hour.

In some cases, the barrister on one side will be paid privately and the other will be legally aided, meaning two colleagues of similar experience working on exactly the same material are paid significantly differing amounts. This raises concerns over inequality of arms over and above issues of equity.

We know that family barristers are already conscious of the needs to develop a practice with a mixture of legal aid and private work just to try to make it work financially.

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**If you don't come from money and don't have financial family support it's really difficult to survive on a legal aid practice. So, one of the things I now advise a lot of students is to specialise in more than one area.**

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The low rates paid for legally aided work do not adequately reflect the seriousness of the work and the impact case outcomes have on people's lives. Private legally aided children work often encompasses serious allegations of domestic abuse. One barrister explained how the work is complicated and challenging.

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**A lot of my clients... they tend to represent the most vulnerable in society. Almost all of my clients are women, many of them have tenuous immigration status, a lot of them don't have English as a first language, many of them are women of colour, and so they are extremely vulnerable. A lot of it is quite specialised work, particularly when you are dealing with coercive and controlling behaviour, which is something that's not very well understood.**

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### **We are concerned about the availability of suitably experienced counsel to do legal aid work**

According to the data presented in the Ministry of Justice's RoCLA the previous government did not foresee a problem with the supply of family barristers, given that the total number of barristers who undertook some family legal aid work had increased during the period 2015 to 2023.<sup>11</sup> However, evidence we received from barristers on the ground is that there is a problem with the supply of junior barristers becoming sufficiently expert in some types of family legal aid work.

Junior barristers are often given a high volume of legal aid cases as they are starting out. This is in part because chambers need someone to do the work, partly because it is good experience, and partly because people want to do the work. Barristers can be “rewarded” by getting more private work as they become more senior and experienced.

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### **References**

11. **Review of Civil Legal Aid Data Publication Series** Table 4.1.4.

We are concerned that there is a cohort of experienced senior juniors and silks who have built up careers doing legal aid work, partly by establishing themselves when the rates were higher; and a rotating cohort of juniors doing this work intensely for a few years and then decreasingly thereafter. This means an undersupply of those in the middle practice years developing the experience in order to be able to take on the more complex cases in due course.

If there is not an adequate supply of suitably qualified barristers, those who need help will not necessarily get the barrister with the experience they need to deal with the weight of a given case. A senior barrister described to us why she and others in her position had moved away from legal aid work.

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**It's hard to generalise about what others do regarding legal aid. Others have made the switch [to private]. A combination of the subject matter, the unpredictability of the hours plus being improperly paid for the work means people move away from it. People coming in at the junior end are still happy to do the work.**

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Not everyone is able to pivot their career away from legal aid to doing more private work.

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**There is risk associated with jumping ship from practice area to practice area. A lot of people don't have the luxury of choice. It would be very risky for them to switch practice areas and start again, especially if they're the primary breadwinner in their household.**

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Once a barrister has built expertise in certain areas, it can be challenging to move away after a while. This creates a hidden sustainability issue when a cohort is still doing legal aid work who then retire and is not replaced by others with the same level of experience.

We see an overarching problem with funding when people consciously undertake private work to cross subsidise their legal aid practice. Doing legally aided work alone is not sustainable.

**There is a particular concern around ensuring the supply of counsel to do public law care work and publicly funded private work.**

Barristers have told us that when they do public law children work and are representing the parent(s) the fee payable is eroded by expenses such as clerking fees, travel, parking and insurance. With many cases it will feel as if they are working for free. This is unsustainable.

It is a similar theme for publicly funded private children work, relating to arrangements for children within families, usually after a family separation.

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I have quite significant concerns for private children work. I think those that do it now, that are more senior, have been doing it since before LASPO and will probably eventually drop out. I don't think those cases are getting any less since the removal of legal aid. I just think they're getting longer, and people [clients] are getting more desperate.

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In these particular areas, which are of tremendous importance in the lives of the children and families involved, the fees are just so low as to make it impossible for any individual barrister to have this type of case as a significant proportion of their work.

**The FAS should offer graduation based on the experience of the advocate and/or the complexity of the case**

The FAS is a flat fee scheme in which there is no acknowledgement for case complexity or the experience required by advocates to work on that case. There used to be an option for graduation based on case complexity and the need for a more experienced advocate through FGF but the flat structure creates problems about obtaining someone with the correct level of experience to undertake the work.

Senior juniors told us about being in situations where they were given increasingly complex cases because of their experience, which required more difficult preparation (for which they would not be paid) resulting in them earning less than they had 20 or 30 years earlier, at the start of their careers.

At the junior end, this can also result in barristers being given cases that would ideally require someone with more experience. A junior barrister of around 5 years' Call described how it feels to be working on cases which require someone with more experience.

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On access to justice within legal aid, I think practitioners, especially in private children [cases], tend to be on the more junior side and yet the issues nowadays are becoming much more controversial much earlier in proceedings, and would perhaps benefit from some more specialist advice from someone more senior who won't take that work because they no longer do the legal aid work.

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**The administrative functioning of the LAA can cause problems when it comes to cash flow and to family barristers receiving the full payment they billed.**

On top of family barristers working extremely hard, their income and cash flow can be unpredictable. Waiting to be paid (aged debt) can be a significant problem for family barristers, particularly if they are not earning enough to be able to build up a buffer against irregular cash flow.



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Why am I working 70 hours a week? Yes, I make a fairly good living, but my cash flow challenges often keep me up at night because it's so unpredictable and a lot of that is down to the structure of legal aid and the way it works.

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I had a case where payment was owed for 6 and a half years. The reason for that was my client won. The judgment was in her favour and the judge decided to make a cost order against the other side who didn't pay, and the [Legal Aid Agency] decided they weren't paying until the person on the other side paid what they were owed.

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Another challenge is if the full amount claimed is disputed or not paid by the Legal Aid Agency (LAA).

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Regarding written submissions. The judge orders advocates to prepare written submissions and allows a sitting day to do them. They take hours. This is recorded in the order and approved by the judge. The clerks claim the fees and payment is made. Then, months or years later, someone else at the LAA relooks at the order and refuses payment for the day allowed for written submissions. Thus, reclaiming money from the barrister.

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# Section two: the changing nature of work

**Key findings: working conditions and ways of working in the system are inadequate, and the fee schemes do not reflect the changing nature of work.**

## **Much of the preparation and written work barristers undertake is unpaid.**

Preparation is unpaid and there has been an increase in expectations as to paperwork that barristers will do, combined with an increase in the complexity of the work that is not reflected in the fee scheme. This is detrimental to any kind of work-life balance, as barristers are underpaid for preparation, much of which needs to be done at evenings and weekends. Examples we have been provided with are:

- Reading and preparation is underpaid
- Wasted preparation when a trial is adjourned. The barrister will only get paid for one day's hearing when their preparation in fact might have taken multiple days, and the trial is not necessarily subsequently relisted in their diary because judges will refuse to list for counsel's availability
- For reviewing phone disclosure and medical records the remunerated page count is capped at 1,400 pages, but the papers the barrister has to read and consider can run to many more thousands of pages
- Position statements can take three - four hours to draft and are not paid
- It used to be that drafting orders was a simple process of writing it in court and handing it over. In the last 10 years, this has gradually changed, and it is now a detailed piece of work that will be subject to discussion in the hours and days after a hearing
- High volume of emails relating to a case, particularly when solicitors are stretched so junior solicitors rely on barristers to extensively support them during their cases. 80 - 100 emails a day of this type is not unusual
- Attendance notes (notes of discussion or events in court) are routinely required by solicitors because their attendance at hearings is not separately funded or is remunerated at a rate which makes it uneconomic for the firm to send anyone to court
- Drafting of additional documents such as recommendations to the LAA for funding are unpaid
- Schedules of allegations or written questions to experts is unfunded
- Written submissions, which are often in lieu of a day's hearing are unfunded
- Chronology of cases, proceedings and police disclosure are all unfunded

It is extremely frustrating to be asked by the court to do additional work for which you know you will not be paid. One family barrister described how she was asked to draft a skeleton argument overnight. It was 8 pages long, took most of the night, was not acknowledged by the court the next day, and she knew she would receive no money for doing it. This is not an unusual occurrence.

The way the scheme does not pay for preparation creates an imperative to be in court in order to get paid whereas for many cases, the bulk of the work is in the unpaid preparation. An unreasonable working expectation is created by this anomaly where a large part of the work that is essential for the case needs to be done outside of core working hours so those core hours can be used to earn a living.

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**We don't go into cases unprepared: we make sure we are 'on it', but that's at the expense of our own wellbeing. I work very, very hard to try and have boundaries and to maintain some sort of work-life balance but at the end of the day, if I've said to my husband once I've said it 1,000 times: 'the bottom line is, I've got to be trial ready and if that means I have to burn midnight oil or work at the weekends or work in the evenings or get up early, I really don't have a choice'.**

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**The fee scheme is set up around timing time physically in court rather than to factor in for the preparation for the meetings and all of the time that you spend outside the court on the case and that is a design flaw.**

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Thorough preparation and familiarity with the bundle is an essential part of ensuring that the client is properly represented. When the fee scheme disincentivises preparation family barristers are forced to opt to do the job properly even though it is directly in contradiction to their own commercial interests.

**The volume, nature and organisation of digital evidence and communication has changed substantively in recent years.**

This has not been reflected in the fee schemes. The size of bundles has grown, and the nature of the evidence has become more complex. Digital disclosures are extremely time consuming to analyse and require a specific skillset. The work has increased in its complexity, but remuneration has remained unchanged.

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Reading a statement is like reading a book or a magazine article; you can sit down with a cup of tea in your spare time and read it. But analysing phone data requires a completely different set of skills and a different, completely different kind of focus, and takes longer. Same with going through medical reports, it's not uncommon to have thousands and thousands of pages, and the remuneration is not reflective of the work involved.

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If I had a bundle for a case in 1996, it might be 100 pages. It might be 200 pages. I'm doing a case now... and we've interrogated mobile phones. We've got 8,000 pages of mobile phone records to go through... it's absolutely key to get this digital material. But the volume of it is absolutely huge. And it's just not reflected in the fee structure.

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In addition to the size of the bundles, the way they are shared has changed. The digital portal has considerable advantages in some ways, but it also means items can be uploaded and shared right at the last moment. Issues relating to formatting and page numbers can make the documents in the case far more unwieldy to navigate.

The other significant time pressure is emails. Hundreds of emails can be exchanged between parties involved in a case, many of them requiring detailed and considered responses. One senior barrister received 80 to 100 emails a day just from solicitors on her caseload. Another barrister reported responding to emails during her entire annual leave because the work could not be covered. These all require consideration and rapid response. The time spent on digital communication about cases leading up to court proceedings can save time during court proceedings but is not remunerated under any of the fee schemes.

### **Problems are caused in the system by litigants in person and QLRs.**

Litigants in person (LiPs) are those who are not represented in court by a solicitor or barrister. Some elect to represent themselves, but many are unrepresented because they cannot afford a lawyer and are not eligible for legal aid. There is a consensus that the general impact of LiPs on the court system is “one of an increased demand on time, costs and resources.”<sup>12</sup>

Family barristers we spoke to agreed that when there are litigants in person involved in a case, more pressure is placed on all legal professionals involved.

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### **References**

12. **Litigants in Person: Guidelines for Lawyers, Bar Council Ethics & Practice hub**

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The issues that they [LiPs] want to raise are not necessarily the right issues... Or they come to court and they don't understand what the rules are. So, for example, today I've had a case where Dad's gone to court and said I want to rely on evidence. 'OK. What is the evidence?' 'Well, I can't tell you. And I've not made an application for it before.' Nobody else knows about it. 'But you can't do that. You need to make a proper application.' And he probably will make his application, but then that sets back everything, whereas if he'd got legal aid, if he'd had counsel and solicitors, they'd be able to address that. There's obviously that saying that lawyers make things much more difficult. But, actually, when you've got lawyers on board, it actually does work out to make things a little bit easier I find.

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Points that are relevant to that child's welfare may well get lost because of the lack of representation [which sets out the child's own views]. I think I've seen that happen.

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You can be head-to-head with often dysregulated and aggressive men demonstrating why it is that they're in the family court in the first place.

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The Court Appointed Qualified Legal Representative (QLR) scheme, introduced in July 2022, is designed to protect victims of domestic abuse from being cross-examined by their litigant-in-person alleged abuser. The court appoints a QLR to cross-examine. Solicitors and barristers can apply to be QLRs.

Feedback on the QLR scheme from family barristers we interviewed was negative. While the principle is sensible, it would be preferable if the scheme were not needed because everyone had proper representation. The rates of pay are seen as being too low, so not enough family barristers are signing up to do it.

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[The QLR scheme is] very beneficial, especially when you're doing fact-finding hearings and injunction final hearings; having that safeguard for alleged victims of domestic abuse is key. It also assists with the smooth running of proceedings. However, the quality can vary.

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The quality of the QLRs that I've seen has not been particularly good and it is very hard to walk into a case and pick it up like that and just to cross examine.

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The fact the QLR scheme was introduced is a recognition that there is a level of need for representation that is going unmet. Rather than tinkering with half-measures, we recommend that funding for proper legal representation is made available for all those parties involved in domestic abuse and other family court cases.

**Interveners often do not get legal representation.**

Interveners are those involved in care cases without being one of the main parties. They can be adults against whom serious allegations are made such as a step father alleged to have sexually abused his partner's child. They can also be family members such as grandparents or aunts who have put themselves forward to care for a child as special guardians or kinship carers. These interveners may have no recourse to public funds and in those circumstances will be unrepresented in proceedings.

This is not a logical or sensible position. Serious findings with lifelong consequences may be made against such a person or what may be at stake is whether children could potentially be able to stay with a family member rather than going into local authority care. The outcome of such a case will have momentous impact on all parties involved.

One barrister described how this risks an unfair outcome:

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The lack of legal aid in some of those cases leads to delay and also does not feel like justice has been served. If you're for an opposing party, for example, but you certainly spot many arguments which should, and probably would, have been run on their behalf had they had access to representation... on a very finely balanced case, one wonders whether the outcome may have been very different had they had representation.

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The lack of legal aid for interveners creates a significant inequality of arms in representation at court.

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I've done a case before involving a child with a skull fracture. And the medical evidence was very complicated, especially [when] there are big factual disputes about what happened. And you might have, say, an uncle or aunt who's in the frame and they're a litigant in person and the mother might have a KC and a junior, and they're running a cutthroat defence... It's outrageous, really, that you could be a litigant in person in contexts like that. The uncle or aunt would be an intervener with means and merits tested legal aid, with a very low threshold to qualify for it, whereas parents get automatic legal aid.

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## The court estate and HMCTS resourcing is inadequate to support effective working.

A long record of underfunding in the court system has left a dilapidated and understaffed court estate, which is not always adequate to support efficient working. If there's no robing room for barristers to change and leave their bags, no availability of drinking water or hot water to wash your hands, no conference room, or conference rooms in which you can hear the conversation in the neighbouring room, technology not meeting the needs of clients, it makes it hard to function. There is often little or no security, which is a problem when working with people who can be emotionally dysregulated or aggressive.

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The court estate, I think, is in some places so terrible. There are some great court centres, but even the newer ones... the heating is off, the heating is on, it's freezing, it's boiling, and we don't have the right facilities. There's no accessibility for somebody in a wheelchair. There's a member of the Bar who can't get up the stairs and there's no lift and so on and so forth. There's nowhere to get a cup of tea. The toilets are in a disgusting state. So even the environment in which we are working now ... feels quite reflective of how people are feeling. It's very worn down.

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When the literal functioning system around you is dysfunctioning, it means people are much more likely to disrespect the administration of that system.

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I did a hearing 6 months ago where it was a floating case - an urgent interim care order being made. [It'd] been put in the waiting list on Friday afternoon. And we couldn't get the technology to work in one room then that judge said, 'well, I don't have any availability to wait longer'. Then we had another judge and another. And the real problem in family proceedings, particularly in care proceedings, as was the case there, there were two very vulnerable young people in hospital with their newborn baby. And to not be able to have a conference properly with your barrister because the court facilities are so poor is unacceptable. So, it went on and on and the result was that we ended up before, I think the [Designated Family Judge] in the end because she was the one who was available at the end of the day to hear this case. But it was 5:30 and these two young parents have been waiting all day to have the decision made with respect to their newborn baby.

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It's difficult to work effectively under these conditions, and it contributes to the overall feeling that the justice system - and those working within it - is neglected.

**Increased use of remote hearings when appropriate would make the workload more manageable and efficient.**

By and large family barristers feel that for case management hearings, urgent hearings and other procedural business, remote hearings work extremely well and mean that people can be more efficient. Much of the client-facing work still needs to be done in person, but an increased use of remote hearings would help barristers to recover a more manageable balance.

In many cases, huge amounts of time is wasted in travel and waiting around at court.

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If you're 7 hours [away] on the motorway, you're leaving at [4:30am or 5am] and it's a long day, particularly if you do the 7 hours travel and have an all day in court. It's horrendous. And you are very, very tired. And then the next morning you're up again and you might even have to do another really long journey. So remote hearings cut out all that travelling and that's got to be good in terms of the work-life balance because you are not having to get up at silly o'clock and not getting home really, really late at night. And you know you're running a car. If you've got 4 advocates in a hearing, and sometimes you would go to Workington, and you'd have 4 people from Liverpool, and you've all got in your cars and polluted the atmosphere with the travel. You spent money on petrol, you spent wear and tear on your car, and particularly when you're only in court for 30 minutes or 45 minutes. It's a nonsense. It's absolutely nonsense... Since the courts reopened fully, there are judges who will insist that you go [in person] and every hearing must be attended because they don't like remote hearings.

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One family barrister who had become disabled through illness felt frustrated that the lack of flexibility around remote hearings made it almost impossible for her to return to work.

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I know some courts now say after Covid-19 they want to go back to fully attended hearings, instead of remote hearings. But on the other hand, there are lots of family barristers that just don't want to do any legal aid work. So, for the sake of that situation, my being able to offer and say, 'well, I could cover some of those hearings if the court could accommodate a reasonable adjustment and enable me to do that remotely' should be considered positively. You know, if it's a directions hearing, a pre-trial review, just timetabling to progress the case, why should I travel 4 to 6 hours to Birmingham when that could be done in an hour or less on Teams or Cloud Video Platform. It just seems such a waste really not to continue to utilise that remote hearing facility for non-contested hearings.

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There is some dissatisfaction that during the Covid-19 lockdown in 2020, the family courts moved quickly and effectively to remote working, and now that has almost all been rolled back with seemingly little consideration nor consultation.

**Lack of provision of other primary services can result in a legal situation becoming more complex and less efficiently resolved.**

Austerity measures and the resultant slashing of frontline services has completely changed the landscape when it comes to families accessing the support they need. It used to be that mental health support, parenting support, domestic abuse services and other public services were all readily available. The lack of these services has made life for the families that family barristers work with very difficult and the pressure on the family courts and barristers much greater, with issues snowballing without earlier intervention.

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If we had Sure Start [a government programme which provided support to families with children under 5] and all the things that used to be in place in the 90s, we wouldn't have as many care proceedings because there would be the on-the-ground work that was put in place to help with child poverty. It's even things like clients trying to get their children through CAMHS [Child and Adolescent Mental Health Services]. Maybe a child's very anxious and that's putting issues in place for having overnights with Dad again. And Dad will raise parental alienation and Mum will go 'No, it's CAMHS' because we can't get them seen yet.

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“

That's always astounded me: that money is spent on saying what these people need in terms of support and we go to court to talk about it. And then the support is not there. And then two years later, they have another baby, and we end up back in court.

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“

The lack of resources is quite disheartening after a while because you're not quite sure what you're doing it for. You're hoping you're doing it for the children and you're hoping those results are going to be better, but actually, an awful lot of the time it's just turning over the next page to find the same blank page staring back at you. It feels as though the prospects for a child are still the same as it was when I was doing this 10 to 15 years ago.

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It is tough for those involved in the system to see children and families involved in legal proceedings who may have been able to avoid court, or at least to have better prospects if they had been able to access support.

**We are concerned about whether there will continue to be enough solicitors working in this area to support legal need.**

Working relationships with solicitors can be pressured as solicitors are under a considerable strain, but any work that is left undone by solicitors needs to be picked up by the barrister.

“

The time it takes to try and first of all understand your instructions because they're generally either just not sent at all, or missing everything. The time it takes to do that and then the time it takes to develop a sensible position, negotiate an order and that type of thing is so disproportionate to what you get paid for that work.

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It's a volume business [for solicitors] because they can't make money in it. So, they push the work down to paralegals or to trainee solicitors... A lot of times I get to court, and a client will say 'I gave all that to my solicitor and I don't know why it's not in the bundle'. A lot of my work as well when I get the bundle is emailing solicitors being like, 'Where's this? Why don't you have this? How come the case was prepped this way? Can you get this extra evidence in? Why didn't you make this application?' So, it's trying to triage.

”

There are also concerns that the issue of legal aid deserts such as those we see in immigration and housing are now creeping in to the family system due to a lack of solicitors prepared to undertake the work.

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The lack of accredited care solicitors in certain regions impacts on how public law proceedings are done if people can't find solicitors and the delay that that causes as well.

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Whether it's from lack of support services for clients, or over worked solicitors or inadequate court facilities, when the whole system is underfunded and overburdened the pressure gets passed down the line. Barristers often feel that, as they are the ones who will be on their feet in court arguing the point, the pressure all ends on them.

# Section three: wellbeing and work-life balance

**Key finding:** The financial and systemic pressures on family barristers are having a detrimental effect on wellbeing and work-life balance.

**Working hours are long, but family barristers were aware of that when they started working and are content that that is a requirement of the job to a degree.**

However, we have been alarmed at the extremely long hours that some are working as their standard working pattern. A family barrister with 30 years' experience described to us how he always made sure he stopped working at 1am as if he worked any later than that he did not function as well in court the next day. Another barrister who had not long returned from maternity leave found the only way she could have evenings and weekends with her baby was if she worked from 4am to 6pm during the week. Neither of these individuals complained about their hours or expressed any sense that this was an unusual way to work.

A relatively typical working pattern for a family barrister could be as described:

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**I invariably work at least a day at the weekend - minimum of 2 hours but could be up to 12 and averages around 6 hours. I work between 8pm and midnight at least 2 nights a week and am often working before court in the morning - from 6am.**

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There is a difference between what is typical at the family Bar and what is seen as reasonable by most working professionals. Working a full court day of 10am until 4pm, plus travel time, plus evenings every weekday as well as one weekend day a week would be seen as a very heavy and potentially an unmanageable workload by many.

One major cause of extended working hours is the extra work barristers have to do without pay. From interviews, it seemed family barristers felt they had no choice but to work these hours to complete their work to the standard needed to represent their client's best interests.

Last minute working culture also contributes. Barristers have to be the last in the chain to receive all paperwork and documentation to allow them to prepare. But this can mean the work becomes hectic and difficult to manage.

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**The overall structure of our role in family public cases is very much [that we are] parachuted in at the last minute to firefight.**

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A problem resulting from the last-minute nature of the work is the difficulty in putting parameters around working life, which is significant for everyone from a work-life balance perspective, but particularly challenging for those who have caring responsibilities, disabilities, health issues or other commitments outside of work. It is an unpredictable job in which it is almost impossible to have plans or structures. One family barrister told us she had to plan her day down to 15-minute time blocks due to her childcare responsibilities. There is not a clear understanding of what flexibility or reasonable adjustments would look like at the family Bar.

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**This is not a career for anyone who needs control over their working hours.**

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Barristers told us that the only way to have some degree of control over working hours was to cut them, which is unachievable financially for many given the overall levels of remuneration.

**The long hours and pressure of work take a significant toll on some.**

A significant number of the family barristers we interviewed described exhaustion, burnout, emotional problems and physical health issues caused by stress and overworking.

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**Three weeks ago, I had a serious medical event in court. And I have no doubt whatsoever that part of the reason for that was work related. I’ve no doubt at all about that. I think that we’re really used to [it], and we think it’s really big and clever, to stay up...all hours working because things need doing. Somebody has to do it.**

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“

**A lot of the work requires the kind of ‘above and beyond’ mentality. But that kind of martyrdom needs to go ... and it makes people feel guilty about what they are or are not doing. It also creates a system that honours overworking and so that facilitates burnout. And burnout is often described as being an individual failing. But it’s created by a system and when the system is under resourced to meet the demands upon it, which is basically the family Bar. Then there’s lots of burnout, but it’s very difficult for people to recognise that.**

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“

I've had burnout twice. I've had problems where my throat has started to close up when I'm in court because I'm just so exhausted. I have chest pains, chest palpitations, [and] panic attacks. I feel like my body's saying 'if you don't stop working and talking, we're going to stop you talking'. I've had over the years significant health problems 100% linked to working too much.

”

Barristers in the family courts have clients who are often deeply traumatised. The court system is ill equipped to deal with these people's needs, so there is a pressure on counsel to make it all work. They are also working within a court system that is under resourced, which puts considerable pressure on professionals working within it to overwork in order to keep the system functioning for the benefit of clients.

**The subject matter that family barristers deal with can present emotional challenges.**

Secondary trauma is very much a factor in the stress family barristers are under. It is a different issue to people seeking a better work-life balance. The material involved in cases, particularly those involving children, can be extremely distressing to see. Those working on a case will have to look at photos, videos, medical evidence, read testimony and speak with clients. Familiarity with all this material is an essential part of preparation, but it takes an emotional toll, particularly when people do not have the time to regroup or seek support.

“

I stopped doing work involving care proceedings when I had a child. The trauma were things I could suddenly imagine a child feeling. The examples of the things that had happened and the quietness with which children feel their distress. I suspect that if at the time I gave up publicly funded work for those reasons I'd have had a space I could discuss these issues I wouldn't have had to leave.

”

Support for secondary trauma is not necessarily available.

“

I think we all acknowledge we probably should talk some stuff out. Images that we have in our head of photographs we'd rather not have seen and realisations of sad things happening to families that we'd hoped wouldn't happen. But I don't think accessibility to the right resources for us is obvious.

”

The day-to-day exposure to other people's trauma can profoundly affect family barristers and many find it impossible to step off the treadmill unless they are forced to do so by burnout or physical collapse. This is both for financial reasons and because it is very challenging to untangle one's commitments to clients and cases.

**There has been a cultural shift regarding work-life balance and wellbeing where junior barristers are more likely to try to put firmer boundaries in place.**

We have noted a generational difference, and some degree of tension, where some at the Bar, and particularly more junior barristers, are more likely to try to take steps to actively protect wellbeing and work-life balance. A senior woman barrister who had observed this told us:

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There have been huge shifts in attitude regarding work-life balance and wellbeing. If you spoke about it when I started, the assumption was the only way to succeed would be to work like a man and make yourself available at all times. People are now much more interested in their wellbeing. What’s missing is that people underestimate the impact of what they do having a daily effect on them and only reach for wellbeing in a meaningful sense when they have a crisis.

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Several people expressed similar concerns to the below:

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I think that youngsters now coming on are more likely to start wanting to lay down limits on what they will do, and I look at that, and I think it’s the wrong attitude to say ‘Well, we did it, so they should have to do it’. Because I think some of the things we were doing are just ridiculous. With hindsight, they were ridiculous. But I do think there’s more of a sense of entitlement.

”

What can look like entitlement from one angle can look like legitimate concern from another:

“

There’s backlash to people raising legitimate concerns about working practices and the old guard will always find that difficult because it means they have to look at what they found difficult or what went wrong for them.

”

The move to reduce work to protect wellbeing means some family barristers are working and earning less:

“

If I was in court every day, then I think I’d be very unwell. And so, I take personal steps to ensure that that doesn’t happen. So, I book prep days and ensure that I have gaps between hearings and enough time as far as possible to read things. But that then has a knock-on effect on your income obviously.

”

“

I've come down on the side of the balance, which is working slightly fewer evenings and weekends, but earning slightly less money, whereas I know other people have come down on the balance of working most weekends to earn more money.

”

People should not need to feel they have to reduce their earnings to work in a reasonable way.

**Wellbeing efforts are welcomed but fail to get to the heart of the problem.**

Bar initiatives around supporting wellbeing at a national and circuit level are welcomed. Many circuits offer initiatives and chambers will often provide support, whether informally among colleagues or formal arrangements such as flexibility or sabbaticals. But many feel that this type of offering places too much responsibility on the individual to manage their own wellbeing, and not enough on the system to provide reasonable working conditions.

“

I think there was a bit of an effort around Covid-19 and post-Covid-19 to try and introduce things like doing yoga at lunchtime and I actually think it made light of how stressed we all actually are, as if we all have the time to just go: 'Oh yeah, I'm going to do some yoga now in my living room' when we're all actually using that time or expected to use that time to do something else.

”

“

I think there is support and I think a lot of it is high quality, but the problems remain that the dynamic of working in the system is so much demand, this much resource, and there just is not sufficient time to recover.

”

People do not necessarily feel they have time to focus on wellbeing as they need to prioritise the work. There is a concern that there is more talk about wellbeing and pressure on individuals to implement steps (that may involve earning less money) whereas the fundamental problems are systemic issues.

If family barristers were to be fairly paid for the work they do, those who wanted or needed to would be able to afford to work less and achieve a better work-life equilibrium.



# Conclusion

The work that family barristers do is vital in the lives of their clients, particularly for any children involved in proceedings. The work is vocational and attracts people with a high level of commitment, professionalism, and compassion for their clients.

There is a feeling that if we carry on as we are at present, the family justice system is destined to fail. One senior barrister likened the situation to being in an inflatable boat:

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You know there's going to be a puncture somewhere, but where? It's quite hard to predict.

”

We asked the family barristers we spoke with whether they intended to continue to do legal aid work at the rate they currently did. The responses were mixed. Most saw the work as a vocation but felt, in any case, that they were stuck doing it. They resented the unreasonable burden it placed on their personal lives and the lack of respect with which they felt their dedication was received by the system:

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Many people would leave in a heartbeat if they could.

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“

We tell our clients how they should look after their children and then we're forced to ignore our own.

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“

If I were younger, I might well not do any more legal aid work.

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I will keep doing the work because I believe in it. I find it, frankly, insulting the amount of money that were paid for it.

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Family barristers are stuck in an outdated fee system with no inbuilt process for increases. Over the last 30 years, the pressures on them have mounted to the point where many feel their working conditions verge on intolerable. There is a window of opportunity now to make improvements and bring the system back from the brink, before access to justice in this area of law is further compromised.

At present, barristers tend to feel that:

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**We don't see a lack of justice being done in the cases that I'm involved in because I'm generally working with skilled and dedicated fellow professionals either advocates or judges who probably have a commitment to a fair process and a fair outcome.**

”

However, if the situation continues to deteriorate it is only a matter of time before cases are compromised either through a shortage of suitable experienced counsel, or because building pressures mean the system is inadequate to function. The impact of this would be devastating. As one family barrister said:

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**There's one thing about delays to the court system, there's another thing about delays to final decisions being made in respect of very vulnerable children.**

”

We have documented in this report a feeling that the good will of family barristers is being taken advantage of, in particular in terms of remuneration, working conditions and wellbeing.

# Annex 1: methodology

The research for this report was carried by our Policy Team, with the support of the Family Law Bar Association (FLBA).

We recruited barristers who were interested in taking part in the research through **our project webpage**, which was promoted through Bar Council and FLBA channels. The webpage had a form that those who wished to speak with us could use to send their contact details and availability.

In late March 2025, we asked barristers who wanted to participate to contact us. We received around 100 responses and sought to identify a representative cohort of approximately 40 individuals to interview based on seniority, type of work and region.

Interviews took place on Microsoft Teams during April and May 2025. They lasted around 45 minutes and were conversations between a barrister and a member of the project team based on a list of questions (see 1.1 below) that were shared with the interviewee in advance. Interviews were transcribed.

Once the interviews had concluded, we reviewed the transcripts and identified emerging key themes we wanted to explore further in focus groups. We contacted the original respondents we had not interviewed and again used Bar Council and FLBA channels to recruit additional participants for focus groups.

Three thematic focus groups were held in June 2025 (see 1.2 below), were each chaired by a senior member of the family Bar and were transcribed. There were 10 to 12 barristers in each group. The themes were the main three concerns that had emerged from the interviews: remuneration; the changing nature of work; and wellbeing/work-life balance.

Following the focus groups, the project team carried out a review of the evidence gathered to allow us to identify the key themes raised in the evidence gathering. We then used material gathered from interviewees to present a policy-focused report. The draft report was reviewed by senior barristers from the Bar Council and the FLBA and key quotes and comments were checked with interviewees in advance of publication.

## 1.1 Interview questions

- What is your area of practice?
- Which main courts do you practice in?
- Could you say what approximate amount of your income is private (non-state) work and what amount public work?
- When did you begin working on family legal aid cases? How would you characterise the work at that time?
- What, if anything, has changed during your career?
- How, if at all, would you describe the effect of changing legal aid on your area of practice?

- What have you been working on in the last week?
- How many hours did you work last week?
- How do you experience the courts working? Have you had challenges with underlisting?
- What is your experience of 'Litigants in Person' in the court system?
- Do you feel your workload has an impact on your work/life balance or wellbeing?
- What, if any, would you identify as the key challenges you and your clients face in accessing justice?
- How, if at all, do you think the administrative structures around family legal aid could be improved?
- How would you describe the immediate and long-term outlook for sustainability of your own practice and family legal aid in general?
- Is there anything else you would like to mention or discuss?

## 1.2 Focus group themes and questions

### 1.2.1. Making work pay: Remuneration and working hours. Chaired By James Roberts KC

- Do you feel that your income is a fair reflection of the work you do?
- Do you feel that your income is a fair reflection of the hours you work?
- How comparable do you think the fees for private work and the fees for legal aid work should be?
- What types of work for which you will not be paid do you most frequently do?
- How do you think the proportion of legal aid work undertaken tends to change over a barrister's career, and why?
- Do you think the FAS should offer graduated fees based on experience?
- How do you think the administrative structures at the LAA around payment for legal aid work could be improved?
- Do you intend to continue to do legal aid work at the rate you currently do, and why/not?

### 1.2.2. Changing nature of work. Chaired by Shiva Ancliffe KC

- Do you feel that the courts are using remote hearings in the most effective way? How would you recommend they be used?
- Do you see any problems with inequality of arms in representation at court? And, if so, which groups are the most impacted?
- What do you think are the positives and negatives of the way electronic communications and document sharing are currently used?
- In which, if any, ways do problems with frontline services mean that your work is made more difficult?

What types of work for which you will not be paid do you most frequently do?

Would you advise a career at the Family bar to an undergraduate making their career choices now? Why / not?

### **1.2.3. Wellbeing and work-life balance. Chaired by Leslie Samuels KC**

- Do you consider the typical working hours at the family Bar to be reasonable?
- Do you think that any simple / practical measures could be implemented that would allow a reduction in working hours or more regular hours for those who wanted?
- Have you noticed any patterns of challenges around health, burnout, exhaustion resulting from overwork in yourself or colleagues?
- Do you think there should be protocols in place around support for secondary trauma? If not, why not? If so, what should they cover?
- Do you think the family Bar is a place where reasonable adjustments can be / are made for barristers with disabilities or health needs?
- Do you feel that you could work less or flexibly if you wanted or needed to? If not, why not? If so, why?
- Have you noticed any changes in expectations or culture around working hours and / or wellbeing during your time at the Bar?

# Annex two: contributors

The researchers would like to thank everyone who gave their time to be interviewed or to participate in a focus group discussion as part of this report.

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# Annex three: legal aid family fees

By courtesy of James Roberts KC, Chair of the Family Law Bar Association

## Pre FGF

Prior to May 2001, the fees paid for family legal aid work were based on fixed fees for more simple work, or else on hourly rates and work done for more complex work. All fees would be subject to taxation by the court, and when non-standard fees were claimed, counsel would need to provide justification via a note on taxation. Counsel could claim payments on account of up to 70% of the fees, but the balance would not be paid until submission of the final bill by the solicitor.

## Family Graduated Fee Scheme (FGF)

The Family Graduated Fee scheme (FGF) was introduced for all funding certificates granted on or after 1 May 2001. FGF provided a means for counsel (and only counsel not solicitor advocates) to be paid as work was completed by submitting claim forms directly to the LAA, the normal payment time for these claims was 6-8 weeks. FGF included in its scope all family work completed by junior counsel or KC excluding appeals to the Court of Appeal or Supreme Court, and it also excluded Trusts of Land and Inheritance Act claims. Where the main hearing in a case ran to 10 days or more it fell within the High Cost regulations. Fees for interim hearings were calculated based on two-and-a-half hour hearing units (or part thereof) of time spent at court, final hearings were calculated based on a fee per day with a higher fee paid for the first day. These basic fees could be enhanced by the addition of Special Issues Payments, which were a percentage increase of the basic fee for various different measures of complexity. There were also fixed bolt on fees for size of the court bundle. For the most complex of cases it was possible to claim "Special Preparation" which was an additional fee based on an hourly rate (of £40.20 per hour for junior counsel and £100.50 for KC) and had to be certified by the Judge.

A "High Court Uplift" of 33% was available for cases proceeding in the High Court.

The scheme was intended to be cost neutral. In fact, the scheme produced a reduction in fees of 13%.

The FGF scheme was amended in November 2003 to allow for the Public Law Outline which impacted Care proceedings.

There were further amendments in February 2005 and August 2009. Structurally the amendments were mainly amendments to the Special Issues Payments.

The 2005 changes were intended to put back 8% into the scheme over 2 years.

The rates were cut by 10% when LASPO came into force in 2012.

FGF continues to apply to cases where authority to instruct a KC has been granted but the case runs for 10 days or less. The KC has to be paid under FGF. The Junior can elect to be paid under FGF or FAS.

### Family Advocacy Scheme (FAS)

The Family Advocacy Scheme (FAS) was the replacement for FGF and was introduced for all funding certificates dated on or after 9 May 2011. FAS was different to FGF in that it included all advocacy completed by junior counsel and solicitors (ie a combined scheme for advocates), but not KCs. There were still the exceptions of appeals to higher courts and Trusts of Land and Inheritance Act claims, and added to this were a whole host of other types of family cases. The core Public Law Care, Private Law Children, Domestic Violence and Financial Remedies work remained in scope, however Public Law was split into Care & Supervision and any other Public Law.

FAS was similar to FGF in concept with interim hearings continuing to be calculated in hearing units as per FGF however a new up to one hour unit was introduced, once the hearing time went beyond an hour the standard two-and-a-half-hour unit or part thereof applied. Final hearings continued to be paid per day at a flat rate but with no differentiation for the first day. The overall figures payable were, however, lower. The Special Issue Payments from FGF had been greatly simplified for FAS as reduced bolt-on payments. There were still additional fees for court bundles though these were now very limited, and the hourly rate for Special Preparation had gone. When CCMS was introduced in April 2016 submission of claims to the LAA moved online and speed of payment rapidly improved. Currently FAS payments are normally made within 7 days of submission of a claim.

The FAS rates were cut by 10% when LASPO came into force in 2012.

### Non-FAS Family

- The following were all excluded from FAS when it was introduced:
- International child abduction, wardship, inherent jurisdiction
- Representation of children in any proceedings save care/supervision
- Forced marriage, embryology act
- Defended divorce, dissolution of civil partnership, nullity
- Appeal against Final Order (Not Interim orders unless to Court of Appeal or higher)
- Appeal to the Court of Appeal or Supreme Court
- TOLATA, Inheritance Act or Court of Protection

There are no set rates for this work, but the LAA will use the solicitor's hourly rates for legally aided family work when assessing counsel's fees. This is a throwback to the pre-FGF fees and counsel can only claim payments on account until the case concludes. At that point counsel is reliant on the solicitor to submit a final bill before they can receive the balance of the fees. This is a particularly messy area of family legal aid.



## High Cost Family (HCF) – more commonly known as Very High Cost Cases (VHCC)

There are two ways that a case can become VHCC:

- Single Counsel - Where the actual or projected costs exceed £25,000 (excluding VAT).
- Two Counsel - Where legal aid is granted for KC and Junior or two Junior counsel.

### In **single counsel cases**

- if the final hearing is estimated at 10 days or less and runs for 10 days or less, then FAS rates of pay apply.
- if the final hearing is estimated at 11 days or more and runs for 11 days or more, then Care Case Fee Scheme (CCFS) or “events” will apply.

### In **two counsel cases**

- if the final hearing is estimated at 11 days or more and runs for 11 days or more then it will be paid at events rates.
- if the final hearing is estimated at 10 days or less and runs for 10 days or less then FGF rates apply.

The CCFS is a simplified method of paying for more complex cases by aggregating the fee across the case based on the number of hearings, advocates meeting, and conferences (“events”), and paying them all at the same rate. This makes costs planning very simple and also means that counsel can claim 100% payment on account as the case progresses.

No ‘brief fee’ is paid in events cases. Each event carries the same value and so, for example, day 1 of a trial is paid at the same rate as day 14. No additional events are paid for pre-trial preparation however long that takes.

CCFS is only available in Care & Supervision cases and the LAA normally pay all other types of High Cost cases on a fully costed basis which is normally on an hourly rate basis.

As with all other types of hourly rates work counsel can only claim 80% payment on account and must wait until the conclusion of the case to claim the final payment.





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