

# The Baring Foundation

## RECRUITMENT AND RETENTION OF LAWYERS

Addressing the challenge of mid-career recruitment  
and retention of lawyers in civil society organisations

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# RECRUITMENT AND RETENTION OF LAWYERS: ADDRESSING THE CHALLENGE OF MID-CAREER RECRUITMENT AND RETENTION OF LAWYERS IN CIVIL SOCIETY ORGANISATIONS

## **About the Baring Foundation**

The Baring Foundation is an independent foundation which protects and advances human rights and promotes inclusion. Our Strengthening Civil Society programme aims to support civil society organisations to embrace the law and human rights based approaches as effective tools for achieving positive change for individuals and communities.

Find out more at: [baringfoundation.org.uk/programme/strengthening-civil-society](http://baringfoundation.org.uk/programme/strengthening-civil-society)

## **About the author**

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# Executive Summary

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## THIS REVIEW ADDRESSES THE CHALLENGE OF MID-CAREER RECRUITMENT AND RETENTION OF LAWYERS AND FINDS THE FOLLOWING

### PROFESSIONAL LEGAL IDENTITY AND NETWORKS OF PRACTICE

There is a strong professional legal identity for lawyers working in civil society organisations. As a result of cuts to legal aid funding and related wider pressures in the system, funding comes from increasingly diverse sources. Changes have necessitated new ways of working, informed by shared values and strong professional networks. These values underpin motivations for working in the sector; and also tend to explain why lawyers choose to stay.

### LEGAL EDUCATION AND TRAINING

Research shows that law students have few opportunities to take up courses in areas of social welfare law (e.g. community care, immigration, housing and welfare benefits). Together with the poor provision of careers advice about the not-for-profit legal sector; the burden of student debt; and a stark reduction in funded training opportunities since 2010, there have been low levels of new recruits in some areas for several decades. The cumulative impact of a lack of trainee recruitment is now being experienced at the mid-career level, especially in some areas such as community care and immigration, and outside of larger UK cities. Low recruitment levels at the junior end also adversely impact upon practising mid-career lawyers as they are more likely to be overburdened without the support of more junior members of staff.

### RATES OF PAY AND PRECARIOUS WORKING

The salary gap between the not-for-profit / legal aid and corporate legal sectors is wider than it has ever been. Newly qualified lawyers in the corporate sector now earn more than three times what an established mid-career lawyer in the not-for-profit sector earns. While lawyers in the sector consistently reveal that they are not motivated by financial reward, research shows that recruitment and retention problems are linked to low rates of pay and precarious working. The short-term nature of grant funding leads to greater instability for workers at a time when they need financial stability due to impacts of Covid-19 and the cost of living crisis. Lawyers in civil society organisations often have 'escape routes' available in these circumstances and may choose to take up employment in the wider public sector, judicial appointments or private practice.

### PROGRESSION AND SUCCESSION PLANNING

Recruitment and retention challenges can lead to stagnation and a lack of progression, which can in turn serve to motivate lawyers to leave to take up other opportunities. It is particularly challenging for civil society organisations to plan projects and casework when there are high rates of turnover within organisations. There are fewer opportunities for intergenerational exchange and mentorship given the ageing demographic in some areas, which can limit progression from mid to senior levels.

## WELLBEING ISSUES

Stressors for lawyers in the sector include low pay; long hours; administrative tasks; unpaid work; vicarious trauma; pressures in the wider justice system; and low morale linked to negative perceptions in the media. Financial instability alongside caring responsibilities can also lead to increased stress. The risk of burnout is generally high both in the voluntary and legal sectors.

The suggestions for strengthening the sector in future include:

- 1. mentorship and intergenerational exchange**
- 2. a mid-career community of practice**
- 3. extended funding terms applicable to recruitment of positions**
- 4. bursaries and loan forgiveness**
- 5. strengthening legal education and training opportunities.**

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# Introduction

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There are considerable challenges in recruiting and retaining lawyers working in wide ranging areas of social welfare law<sup>1</sup> and criminal justice. Pressures in the wider landscape have played a critical role in exacerbating the problem over the last decade. Even before the Covid-19 pandemic or the cost of living crisis,<sup>2</sup> evidence pointed to a range of day-to-day pressures such as court closures; cuts to legal aid; austerity measures; increased private contracting in public service provision (e.g. social care, housing, probation); and rising numbers of litigants-in-person in the courts and tribunals.<sup>3</sup> Alongside these issues, lawyers continue to report low levels of morale linked to socio-political changes and the negative perceptions of their work in the public sphere. A marked increase in legal aid advice 'deserts' and 'droughts'<sup>4</sup> in recent years has arguably led to greater need, but also reduced capacity to use the law strategically to tackle systemic injustice given the pressure of high volume frontline casework.<sup>5</sup>

Against this background, this literature review aims to draw together existing research on the sustainability of organisations in the civil society landscape as it relates to the recruitment and retention of lawyers.

This report focuses on mid-career legal professionals and draws out lessons regarding mid-career professionals working in civil society organisations.<sup>6</sup> The key objective is to gain a deeper insight into the issues facing civil society organisations with respect to recruitment and retention, and to explore ways in which such organisations might be strengthened and sustained for the future.

- 1 This includes areas such as welfare benefits, immigration and asylum, housing, debt, community care, family and child law, including their relationship to public and human rights law.
- 2 Fawole, M. 'Advice agencies are already feeling the impact of the cost of living crisis' (The Access to Justice Foundation). Available at [atjf.org.uk/advice-agencies-are-already-feeling-the-impact-of-the-cost-of-living-crisis](https://atjf.org.uk/advice-agencies-are-already-feeling-the-impact-of-the-cost-of-living-crisis).
- 3 Vanhala, L. & Kinghan, J. *Using the Law for Social Change: A Landscape Review* (The Baring Foundation, 2018).
- 4 Community care, education, housing, immigration and social welfare have all been identified as areas with low numbers of legal aid providers. The Law Society of England and Wales, *Legal Aid Deserts* (The Law Society, 22nd August 2022). Available at [www.lawsociety.org.uk/campaigns/legal-aid-deserts](https://www.lawsociety.org.uk/campaigns/legal-aid-deserts).
- 5 Kinghan, J. *Lawyers, Networks and Progressive Social Change* (Hart, 2021).
- 6 The literature usually uses the term 'not-for-profit providers' to refer to organisations such as law centres, charities and NGOs offering different forms of legal information, advice and representation.

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## Research questions

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A number of recent studies and inquiries have sought to gather data on ‘legal aid leavers’ – those individuals who decide to leave legal aid work – to gain a more accurate picture of the scale of challenges faced by the legal aid workforce.<sup>7</sup> While these studies relate to legal aid broadly, they contain relevant findings about issues in not-for-profit organisations and help us to understand the reasons why lawyers might choose to stay or leave the sector. Relying on these studies, relevant academic commentary, policy reports and other empirical research, this review considers both the ‘push’ and ‘pull’ factors influencing lawyers, as well as the diversity issues raised by retention and recruitment challenges.

This literature review aims to address the following questions:

- 1. Why are lawyers motivated to work in the sector?**
- 2. Why do they choose to leave?**
- 3. In what areas of practice are recruitment and retention challenges most prevalent?**
- 4. What equality and diversity issues are raised by recruitment and retention issues?**
- 5. What initiatives and opportunities might better support recruitment and retention in future?**

This literature review offers an important opportunity to gain insights from wider relevant data; reflect on the current internal and external landscape; and highlight knowledge gaps that might be addressed through the work of the Baring Foundation and other funders.

<sup>7</sup> See e.g. The Westminster Commission on Legal Aid, *Inquiry into the Sustainability and Recovery of the Legal Aid Sector* (All-Party Parliamentary Group on Legal Aid, 2021); Justice Committee, *The Future of Legal Aid* (HMSO, 2021); Legal Aid Practitioner’s Group, *We Are Legal Aid: Findings of the The Legal Aid Census 2021* (LAPG, 2022).

# Background

Before considering these questions, it is worth exploring several definitional and background issues:

## DEFINING THE 'MID-CAREER' STAGE

After a period of legal education, training and qualification, lawyers begin to develop their 'post qualification experience' (PQE). It is generally accepted that at four to six years PQE a lawyer is 'mid-level' and well established in their area of practice and that the investment made into training, in terms of time and resource, will allow them to independently carry caseloads without supervision where complex issues might arise.<sup>8</sup>

For social justice lawyers, this independence may come sooner due to smaller organisational size, resource constraints and less hierarchical management structures. Longitudinal academic studies have tended to define the 'mid-career' stage as around twenty years from qualification;<sup>9</sup> however, for the purposes of this review it is interpreted as being a 'mid-level' lawyer in view of the challenges for recruitment and retention at this stage. Generally, this review is therefore concerned with lawyers with around five years PQE who are no longer early career practitioners but do not yet hold senior management or directorship positions.

## RELEVANCE OF LEGAL EDUCATION AND TRAINING

The constraints of UK legal education and training have an impact on the capacity of mid to senior management legal teams within civil society organisations. Research has shown low levels of course provision at the undergraduate and postgraduate stage in diverse areas of legal aid relevant to the work of civil organisations. It is noteworthy that there is a strong correlation between those areas not taught at law school and those where there are low levels of recruitment. Subjects not commonly offered include immigration, welfare benefits, housing, community care and education law.<sup>10</sup>

There is also a lack of careers advice for students wishing to pursue careers in legal aid and the not-for-profit sectors;<sup>11</sup> exacerbated by the 'corporate creep' of the law school curriculum;<sup>12</sup> and a failure to incorporate any content on social welfare law into the SQE programme in England and Wales.<sup>13</sup> High levels of debt, combined with prospectively low salaries, also act as a barrier to those from lower socio-economic backgrounds.<sup>14</sup> It has been shown that those from ethnic minority backgrounds find it more difficult to secure professional training contracts.<sup>15</sup> Alongside the poor funding provision for the education and training of trainees, this has cumulatively resulted in far fewer newly qualified lawyers coming into the field. Before the abolition of the scheme in 2010, the Legal Services Commission funded a total of 750 trainees. While the Legal Education Foundation's

<sup>8</sup> Reyes, E. 'How to progress: 4-6 years' PQE' (Law Society Gazette, 26th October, 2015), Available at [www.lawgazette.co.uk/features/how-to-progress-4-6-years-pqe/5051783.article](http://www.lawgazette.co.uk/features/how-to-progress-4-6-years-pqe/5051783.article).

<sup>9</sup> Monahan, J. & Swanson, J. (2009) 'Lawyers at Mid-Career: A 20-Year Longitudinal Study of Job and Life Satisfaction' *Journal of Empirical Legal Studies* 3(6) 451-483.

<sup>10</sup> Denvir, C., Kinghan, J., Mant, J. & Newman, D. *Legal Aid and the Future of Access to Justice* (Hart, 2023 forthcoming) 61-64.

<sup>11</sup> Ibid, 71-72.

<sup>12</sup> Ibid, 55.

<sup>13</sup> Baksi, C., 'New 'super exam' threatens social welfare law' (*The Times*, 20th February 2020).

<sup>14</sup> Young Legal Aid Lawyers, *Social Mobility in a Time of Austerity* (YLAL, March 2018). Available at [www.younglegalaidlawyers.org/sites/default/files/Soc%20Mob%20Report%20-%20edited.pdf](http://www.younglegalaidlawyers.org/sites/default/files/Soc%20Mob%20Report%20-%20edited.pdf).

<sup>15</sup> Pleasence, P. et al., *A Time of Change: Solicitors' Firms in England and Wales* (The Law Society, Legal Services Board, Ministry of Justice, 2012), 9.



Justice First Fellowship Scheme has sought to fill this gap to some extent, the numbers are comparatively few at fifteen to twenty each year. The Westminster Commission recently recommended that state funded education and training opportunities be reinstated at the earliest opportunity.<sup>16</sup>

In Scotland, similar trends were identified in 2009, with one study on recruitment and retention of legal aid noting: “*The lack of experience in legal aid work being gained by current trainees and assistant solicitors may mean long-term difficulties for the public in accessing legal aid services unless different approaches are taken to recruitment and training, or the delivery of legal aid.*”<sup>17</sup>

Existing research suggests a number of ways in which the low rates of trainee recruitment adversely impacts upon mid-career lawyers.

### 1. Workload burdens

Work that would usually be assigned to trainees and more junior members of staff overburdens mid-career lawyers as it needs to be done in addition to more complex aspects of legal casework.

### 2. Stagnation

A lack of trainees coming through the system means mid-career lawyers experience career stagnation with limited opportunities for transition and progression in their roles.

### 3. Intergenerational exchange

The average age of lawyers having increased means that there are less opportunities for mentorship of new recruits and intergenerational exchange, which has been shown to improve wellbeing both for mentors and mentees.<sup>18</sup>

## 4. Succession planning

An ageing demographic and fewer new recruits raise issues for succession planning.<sup>19</sup>

## SOURCES OF FUNDING

Recent statistics show that government funding for voluntary organisations generally is at a 15-year low, falling from £9.4 billion in 2007/8 to £6.9 billion in 2019/20.<sup>20</sup> Additionally, the deep impact of cuts to legal aid and local government grant funding for advice services has had ramifications for civil society organisations over the last decade.<sup>21</sup> This has further necessitated the pursuit of funding from external trusts and foundations,<sup>22</sup> while organisations have worked to ‘adapt and survive’.<sup>23</sup> Of all not-for-profit legal advice providers, more than half of all funding now comes from sources other than the government.<sup>24</sup> For charities that receive legal aid, recent figures show that it only represents around 12% of their funding.<sup>25</sup>

The reliance on short-term grant funding nonetheless contributes to workplace precarity. It is well established that precarious employment is detrimental to health and wellbeing, which heightens the risk of burnout.<sup>26</sup> Many lawyers are employed on fixed term contracts with rates of pay lower than counterparts in high street law firms; and certainly significantly lower than in “silver” or “magic circle” city firms where starting salaries can be up to three times that of the average mid-career lawyer in a not-for-profit organisation.<sup>27</sup>

<sup>16</sup> Westminster Commission, n 7, 24.

<sup>17</sup> Scottish Legal Aid Board, *Recruitment and Retention of Lawyers* (SLAB, 2019) 10.

<sup>18</sup> See, Steven, J., Larkin V. et al. (2022) ‘Enacting Mentorship which empowers’ 20(2) *International Journal of Evidence Based Coaching and Mentoring* 68-84; See also Kinghan, J. (2021) ‘Lifetimes of Commitment to Law and Social Justice’. In Gordon, F. & Newman, D. (eds). *Leading Works in Law and Social Justice*. Abingdon: Routledge.

<sup>19</sup> Westminster Commission, n 7, 94.

<sup>20</sup> NCVO, *UK Civil Society Almanac 2022* (NCVO, 2022). Available at [www.ncvo.org.uk/news-and-insights/news-index/uk-civil-society-almanac-2022/#](http://www.ncvo.org.uk/news-and-insights/news-index/uk-civil-society-almanac-2022/#).

<sup>21</sup> Organ, J. & Sigafoos, J. *The impact of LASPO on routes to justice* (Equality and Human Rights Commission, 2018).

<sup>22</sup> <https://atjf.org.uk/advice-agencies-are-already-feeling-the-impact-of-the-cost-of-living-crisis>

<sup>23</sup> Morris, D. & Barr, W. (2013) ‘The impact of cuts to legal aid on charities’ 35(1) *Journal of Social Welfare and Family Law* 79–94.

<sup>24</sup> The Access to Justice Foundation, *Specialist Legal Advice Providers* (360 Giving, June 2022) 6. Available at [atjf.org.uk/wp-content/uploads/2022/08/Specialist-Legal-Advice-Analysis-Report-June-2022-v2-FINAL.pdf](http://atjf.org.uk/wp-content/uploads/2022/08/Specialist-Legal-Advice-Analysis-Report-June-2022-v2-FINAL.pdf).

<sup>25</sup> Ibid, 10.

<sup>26</sup> Gray, B. Grey, C., et al. (2021) ‘Differences in the impact of precarious employment across population sub groups: a scoping review’ 141(1) *Perspectives in Public Health* 37-49.

<sup>27</sup> Ames, J. *Linklaters Offers £107,000 Starting Salary For 24 Year Old Solicitors* (*The Times*, 25th September 2021), [www.thetimes.co.uk/article/linklaters-offers-107-000-starting-salary-for-24-year-old-solicitors-vt0dsg76n](http://www.thetimes.co.uk/article/linklaters-offers-107-000-starting-salary-for-24-year-old-solicitors-vt0dsg76n).

## PROFESSIONAL LEGAL IDENTITY

Until recently, legal aid has represented not simply a source of funding; but a strong professional legal identity and related networks of practice. Unlike other jurisdictions where ‘public interest’ or ‘civil liberties’ are common labels for lawyers working to advance social justice, the system of legal aid provision has provided an alternative construction of identity for those lawyers choosing to reject a career in corporate legal practice. The scholar Emma Cooke explores the extent to which traditional notions of occupational identity of legal aid lawyers have been challenged by cuts to legal aid funding.<sup>28</sup> As funding streams have diversified, so too have ways of working. Cooke finds that a new ‘shared orientation model’ exists whereby lawyers are moving away from traditional blanket conceptions of their work to a ‘shared working model which emphasises diversity rather than conformity’. In practice, Cooke notes that this might mean lawyers in different types of practice working in closer proximity to one another, holding multiple job titles or working in a way that is distinctive to a particular setting.

This model embraces collaboration and knowledge sharing, which has in turn incentivised communities of practice:

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“Increasingly precarious conditions within the legal aid world have strengthened the solidarity amongst workers within it, as they become particularly eager to keep the profession alive – conducive to legal aid work becoming more of a progressive ‘community of practice’.”<sup>29</sup>

**Emma Cooke, scholar**

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Kinghan similarly finds that across five different practice sites<sup>30</sup>, including lawyers in charities and NGOs, progressive lawyers are increasingly collaborative with a strong sense of collective identity and shared values, notwithstanding the use of different legal tools and divergent approaches. The practice sites themselves are distinct from one another, yet also interdependent, and lawyers work creatively and strategically across them in the pursuit of shared goals.

<sup>28</sup> Cooke, E. ‘The Working Culture of Legal Aid Lawyers: Developing a ‘Shared Orientation Model’’ 31(5) *Social & Legal Studies* 704-724.

<sup>29</sup> *Ibid*, 709.

<sup>30</sup> Kinghan, n 5. These are: Legal aid law firms; Independent Bar; Law School Clinics; Law Centres; Charities and NGOs.

## Areas with low levels of mid-career recruitment and retention

The challenge for civil society organisations in recruiting and retaining practitioners are longstanding. The Covid-19 pandemic combined with rising living costs has meant that organisations are generally struggling to fill advertised positions.<sup>31</sup> Notably, scholars have identified ‘escape routes’ for at least the last two decades pursued by legal aid practitioners as a result of increased bureaucracy and a related culture of burnout.<sup>32</sup> For certain areas of law, the accumulated impact of retention problems over time, together with the impact of the more recent impacts of the Covid-19 pandemic, have led to crisis. The issue for civil society organisations as it relates to retention in the legal aid sector arises in a number of ways.

### 1. Frontline evidence-base

Effective frontline (often ‘high volume’) service provision is needed to gather data and spot systemic issues.

### 2. Judicial review

Civil society organisations are largely reliant on legal aid contracts to pursue judicial review challenges.

### 3. Pro bono support

Where there is pressure elsewhere for legal aid lawyers they are less likely to have capacity to support organisations in a pro bono capacity.

One of the most challenging areas for mid-career recruitment is in **community care law**.<sup>33</sup> This is troubling in view of increased legal needs as a result of the social care crisis,

and the law adverse impacts of the Covid-19 pandemic still being experienced in the sector. Low recruitment levels strongly relate to:

#### 1. Limited opportunities

Small numbers of training opportunities linked to low profit margins and capacity issues in legal aid law firms conducting community care work.

#### 2. Limited pool of training principals

Small numbers of *practising* lawyers working in community care in the not-for-profit sector and therefore in a position to act as training principals.

#### 3. Trainee ‘supply-side’ issues

A failure to teach or incentivise students into working in this area due to low levels of awareness among law school educators and / or careers advisers. These issues have been deepening over the last decade, explaining the lack of lawyers in the pool of potential recruits for advertised positions with at least five years PQE.

Similar issues have been experienced in **immigration law**. Wilding identifies the pressure points in the system, meaning that fewer lawyers can operate as legal aid lawyers in this field. Practitioners have been steadily leaving the market for some time and there are fewer supervisors available to train new recruits; as well as a bureaucratic system which drives down quality and rewards those doing the least amount of work on cases.<sup>34</sup> Wilding’s research has shown that the only area of the UK with good provision is Scotland, but that this

<sup>31</sup> Whitehead, H. ‘Recruitment: why are charities struggling to fill roles, what can be done?’ (*Civil Society*, 19th August 2022). [www.civilsociety.co.uk/news/recruitment-why-are-charities-struggling-to-fill-roles-and-what-can-be-done.html](http://www.civilsociety.co.uk/news/recruitment-why-are-charities-struggling-to-fill-roles-and-what-can-be-done.html).

<sup>32</sup> Moorhead, R. (2004) ‘Legal Aid and the Decline of Private Practice: Blue Murder or Toxic Job?’ 11(3) *International Journal of the Legal Profession* 159, 180. See also; Sommerlad, H. (2001) ‘I’ve Lost the Plot: An Everyday Story of Legal Aid Lawyers’ 28(3) *Journal of Law and Society* 335.

<sup>33</sup> Ashton, A., Gough, L. et al. (2022) *Community Care Legal Career Pathways* (Access Social Care).

<sup>34</sup> Wilding, J. (2021) *The Legal Aid Market: Challenges for Publicly Funded Immigration and Asylum Legal Representation* (Policy Press).

is concentrated in Glasgow and Edinburgh.<sup>35</sup> In London, despite more legal aid and OISC accredited provider organisations than any other part of the country, there is insufficient supply.<sup>36</sup> There has been an injection of considerable amounts of funding from grantmakers into the immigration and asylum advice sector in recent years. However, without also addressing the crisis in relation to legal education and training identified above, this funding will arguably fail to address long-term issues in relation to supply and demand, given the small numbers of new lawyers specialising in the field and high numbers of mid-career lawyers leaving to work in other areas.

There is also a wealth of evidence demonstrating a retention crisis in **criminal law**.<sup>37</sup> While civil society organisations tend not to undertake high volume criminal defence work, some work on criminal appeals, judicial review challenges, prison law, juvenile justice and at the intersection of equality and discrimination and criminal justice. Casework and projects rely on experienced practitioners; however, criminal law is one of the most challenging areas in which to recruit.<sup>38</sup> In general, research demonstrates that crime is the most common area of legal aid in which practitioners no longer practice<sup>39</sup> and issues relevant to retention have been experienced widely across the UK. In Scotland, criminal defence solicitors organised a withdrawal of services due to a lack of financial support for law firms reliant on legal aid.<sup>40</sup>

<sup>35</sup> Wilding, J. *No access to justice: how legal advice deserts fail refugees, migrants and our communities* (Refugee Action, 2022) 76-94.

<sup>36</sup> Wilding, J., Mguni, M., & Van Isacker, T. (2021) *A Huge Gulf: Demand and Supply for Immigration Legal Advice in London* (Justice Together, 2021).

<sup>37</sup> Ministry of Justice, *Independent Review of Criminal Legal Aid* (2021). See also; Thornton, J. (2020) 'Is publicly funded criminal defence sustainable? Legal aid cuts, morale, retention and recruitment in the English criminal law professions' 40(2) *Legal Studies* 230-251.

<sup>38</sup> Denvir et al, n 10, 204

<sup>39</sup> *Ibid*, 203.

<sup>40</sup> Bremner, A. *Legal Aid: Policy Issues* (SPICe Briefing, 2019). Available at [sp-bpr-en-prod-cdnep.azureedge.net/published/2021/9/23/5d9b4fd6-0341-478a-a64d-d5cb41099c6d/SB%2021-67.pdf](https://sp-bpr-en-prod-cdnep.azureedge.net/published/2021/9/23/5d9b4fd6-0341-478a-a64d-d5cb41099c6d/SB%2021-67.pdf).

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## Geographic issues

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Regional variations across England and Wales, and in each of the devolved nations, have led to different issues in relation to recruitment and retention. For example, the Scottish Legal Aid Board does not tender legal aid contracts as in England and Wales. Rather, qualified solicitors can make applications on a case-by-case basis and in practice are concentrated in particular firms and law centres. While there is perhaps greater flexibility than with a contracting system, issues have been raised about geographic reach and advice deserts. Notably, in a recent Scottish Government legal aid consultation, responses from civil society organisations were largely supportive of a more targeted grant funding system and, indeed, some suggested the use of contracts to achieve this goal.<sup>41</sup> There was also some agreement that these might be tailored to particular groups such as, for example, women affected by domestic violence, care experienced children and people with disabilities. However, regardless of changes to funding, recruitment and retention issues remain for remote areas outside of the Scottish Central Belt. Research by the Scottish Legal Aid Board shows that most prospective lawyers want to work in large city-based firms<sup>42</sup> and the provision of specialist advice (e.g. child law, immigration) outside of these locations can be challenging notwithstanding the availability of remote services.

In Wales, discrepancies in advice provision between the North and South have historically presented access to justice challenges and there is a need for Welsh speaking service provision.<sup>43</sup> A recently opened law centre in North Wales aims to alleviate the issue in that region. In criminal defence, pressures have been well documented in Wales.<sup>44</sup> The Welsh Government continues to lobby for the devolution of justice to Wales; as such work programmes have been identified in order to address 'how pathways into the legal professions can be extended to support more young people to enter the law from a range of backgrounds' so that the workforce can support more of its 'home-grown talent'.<sup>45</sup> In Northern Ireland, there is little documented evidence on recruitment and retention problems. However, the ongoing instability of the Legislative Assembly raises concerns, with legal professionals arguing that legal funding restrictions risk advice deserts in parts of the country.<sup>46</sup>

<sup>41</sup> [www.gov.scot/publications/legal-aid-reform-scotland-consultation-response/pages/3](http://www.gov.scot/publications/legal-aid-reform-scotland-consultation-response/pages/3).

<sup>42</sup> <https://www.slabb.org.uk/app/uploads/2019/03/Recruitment-and-Retention-of-Lawyers-Full-Findings-Report.doc> p.9

<sup>43</sup> Kinghan, J., & Vanhala, L. *Access to Judicial Review in Wales* (The Public Law Project, 2021).

<sup>44</sup> Dehaghani, R & Newman, D. (2021) The crisis in legally aided criminal defence in Wales: Bringing Wales into discussions of England and Wales. 4(2) *Legal Studies* 234-251.

<sup>45</sup> Justice Commission Wales Report p.144.

<sup>46</sup> Irish Legal News, 'Justice cuts would create advice deserts in Northern Ireland' (10th Feb 2022). For historical discussion of legal aid and the voluntary sector in Northern Ireland see, Allamby, L. (2002) 'Legal Aid Reform: A View from the Voluntary Sector' 53 *Northern Ireland Legal Quarterly* 167.

# Motivations to work in or leave the sector

## MOTIVATIONS TO WORK IN THE LEGAL AID SECTOR

There has historically been a connection between social justice lawyering and strongly held personal values and beliefs.<sup>47</sup> Lawyers working in civil society organisations will commonly describe a clear turning point away from corporate legal practice towards an alternative career path in the public interest. They rarely describe having financial motivations; rather, they express satisfaction with relational aspects of their work and subscribe to its underlying cause. As is common in the not-for-profit sector more widely,<sup>48</sup> so called cause lawyers tend to relate job satisfaction to prosocial behaviours. They commonly connect their professional lives to their personal or political belief systems; and the opportunity to improve access to justice for others.<sup>49</sup>

The Legal Aid Census<sup>50</sup> confirms these insights and provides some further data on the reasons why people choose to work in areas of legal aid. Of 1,180 practitioners who responded to a question asking to select as many motivations as might apply, the most common motivation was having the opportunity to help those facing economic, cultural and social disadvantage, followed by the opportunity to make access to justice more equitable. Only 0.5% of respondents reported joining the sector in pursuit of an income.

Table 1: Most common reasons for working in legal aid<sup>51</sup>

	NUMBER N (=1,180)	PERCENT
Opportunity to help those facing economic, cultural or social disadvantage	893	75.7%
Opportunity to make access to justice more equitable	840	71.2%
Opportunity to have a positive impact on society	833	70.6%
Opportunity to improve access to justice	756	64.1%
Opportunity to apply my skills to help others	723	61.3%

There is also a strong correlation between motivations to enter the sector and motivations to stay. Denvir et al note that 'it is possible for practitioners to achieve the ambitions that had originally motivated them to pursue a career in legal aid, though not without making significant sacrifices and / or balancing a number of other challenges.'<sup>52</sup>

As discussed above, lawyers in the not-for-profit and legal aid sector are highly networked and rely on collaborative and creative approaches in their work. Lawyers report engaging with a large number of professional networks, and find these valuable (for example, for gathering knowledge, updates on practice).<sup>53</sup> Wider research suggests

<sup>47</sup> Kinghan, n 5.

<sup>48</sup> Borzaga, C., & Tortia, E. (2006). Worker Motivations, Job Satisfaction, and Loyalty in Public and Nonprofit Social Services 35(2) *Nonprofit and Voluntary Sector Quarterly*, 225–248.

<sup>49</sup> Kinghan, n 5.

<sup>50</sup> The Census captured the responses of 1,208 current practitioners who had established a career in legal aid, 175 students studying for their LLB, GDL, LPC, bar course or enrolled in the SQE who expressed an interest in pursuing a career in legal aid, and 255 former legal aid practitioners. Of the 1,055 current practitioners who responded to the survey, 5.3% (n=64) worked in a not-for-profit advice setting and 5.11% (n=61) worked in law centres.

<sup>51</sup> Denvir et al, n 10, 17.

<sup>52</sup> Ibid, 32.

<sup>53</sup> Ibid, 229.

that where accessible, inclusive professional networks can serve to strengthen social mobility;<sup>54</sup> fulfil an organising or movement building function;<sup>55</sup> and present opportunities for leadership development.<sup>56</sup>

## MOTIVATIONS TO LEAVE THE LEGAL AID SECTOR

There has not been an empirical study to date which focuses exclusively on civil society organisations and the motivations for joining, staying or leaving civil society legal practice. However, a number of findings can be extrapolated from wider studies, which go some way to explaining the pressures experienced by lawyers in the field. The table below, for example, outlines the most common reasons for leaving legal aid practice in England and Wales.

**Table 2: Most common reasons for leaving the sector<sup>57</sup>**

	NUMBER N (=248)	PERCENT
Better pay, working conditions and entitlements	145	58.5%
To advance career opportunities or prospects	99	39.9%
I wanted an easier / less stressful position	79	31.9%
Area of practice fell out of scope for legal aid	63	25.4%
It was time to move on	45	18.1%

## RATES OF PAY AND PROGRESSION

While financial motivation does not feature in explaining why lawyers want to enter the sector, it is a considerable factor in explaining why they might leave. For legal aid lawyers

generally (including those in the not-for-profit sector), nearly half in a recent study identified remuneration as what they liked least about the job.<sup>58</sup> Other challenges tend to relate to remuneration in some form, for example, large amounts of unpaid work.<sup>59</sup> Notably, organisations generally (i.e. legal aid law firms and not-for-profits) report finding it difficult to recruit suitably qualified lawyers and note that the availability of better salaries elsewhere is a key concern.<sup>60</sup> Similarly, there is a risk that when lawyers leave the not-for-profit sector for financial reasons, they are unlikely to return.

Statistics on the average salaries for all lawyers working exclusively in civil society organisations are unavailable. The Legal Aid Census is illustrative and finds that the most common salary is between £30,000 and £39,000 (19.3%, n=228 of 1,185). More than half of practitioners earn less than £49,999 and 8.2% (n=97) earn less than £19,999.<sup>61</sup> While a small number of salaries at the upper end can reach above £150,000, these tend to be barristers doing a mix of private and legal aid work. Outside of England and Wales, there are no recent statistics for Scottish legal aid / not-for-profit salaries; however, the most recent general workforce survey shows that mid-level salaries tend to be lower in Scotland than in England. Average salaries (across all legal sectors) noted in responses were £27,000 to £54,000 in Scotland; whereas in England the equivalent salaries (in 2018) were £54,000 to £63,000.<sup>62</sup> Average salaries in Northern Ireland for lawyers again tend to be lower than in England and Wales.

Law centres generally note the difficulty in being able to attract and retain candidates due to salary levels being so far below the corporate sector. Starting salaries for newly qualified lawyers in corporate law can now reach £165,000 in some international firms based in London.<sup>63</sup> Charitable grants from trusts and foundations can provide support where legal

<sup>54</sup> See e.g., Francis, A. (2015) 'Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience' 42 *Journal of Law and Society* 173.

<sup>55</sup> Kinghan, n 5.

<sup>56</sup> See e.g., Rhode, D. (2017) 'Leadership in Law' 69 *Stanford Law Review* 1603.

<sup>57</sup> Ibid, 91.

<sup>58</sup> Ibid, 32.

<sup>59</sup> Ibid, 37. E.g. for every fifty-seven minutes of work two hours worked is remunerated under the fixed fee regime.

<sup>60</sup> Ibid, 24.

<sup>61</sup> Ibid, 29.

<sup>62</sup> Scottish Young Lawyers Association, *Survey on Retention Issues in the Legal Profession* (2018). Available at [www.syla.co.uk/retention-in-the-legal-profession.html](http://www.syla.co.uk/retention-in-the-legal-profession.html).

<sup>63</sup> Hinkley, E. 'Skadden raises NQ lawyer pay to £165k' (*Legal Cheek*, 11th January 2023).

aid income is insufficient but law centres report sustainability challenges due to the short-term project based nature of the funding.<sup>64</sup>

High levels of student debt are also relevant in the context of rates of pay and progression. Even where debt might not deter practitioners from entering the sector, it can negatively influence decisions to leave.<sup>65</sup> Evidence suggests this to be especially the case in criminal defence work.<sup>66</sup> The Westminster Commission has generally reported that legal aid salaries must be 'competitive within the legal market and provide employees with a reasonable standard of living' and they should enable recruitment of lawyers from a 'wide range of socio-economic backgrounds' and offer 'realistic career progression'.<sup>67</sup>

## WELLBEING

Since the Covid-19 pandemic, there has been a sharp rise in staff burnout and related mental ill-health generally across the voluntary sector. In a 2022 report, 97% of grassroots and community voluntary sector organisations identified mental health support as their biggest challenge, with 82% of organisational leaders saying they were concerned about staff burnout in the month ahead.<sup>68</sup> The risk of burnout is also high in the legal profession: a total of 69% of respondents to a 2021 Lawcare survey reported having experienced mental ill-health; and one in five reporting bullying, harassment or discrimination at work. Comparably, almost half of legal aid practitioners report that their work has an overall negative effect on their wellbeing.

Research has also highlighted the extent to which high levels of stress and low morale has impacted negatively on the wellbeing of lawyers. These stressors can be exacerbated by negative perceptions of one's role in the press and wider public sphere,<sup>69</sup> which has been potentially damaging for immigration lawyers in recent years.<sup>70</sup>

Denvir et al note that while legal aid practitioners report enjoying their work, 'doing what they wanted was causing them harm, and that their passion was not enough to mitigate the negative impact on their wellbeing'.<sup>71</sup> For lawyers working in the not-for-profit sector, there may be a correlation between economic insecurity and mental ill-health, including low self-esteem.<sup>72</sup> Those working with vulnerable clients are at increased risk of vicarious trauma and burnout associated with emotional labour.<sup>73</sup> Taken together, these wellbeing impacts strongly incentivise practitioners to pursue opportunities outside the sector. Positive working relationships are valuable in mitigating some of these risks, as are supportive management and progression routes. Workplace mentorship can also serve to promote relational and emotional wellbeing; and lead to positive career outcomes.<sup>74</sup> This can be valuable in relation to protected characteristics, for example, there have been some successful programmes for women<sup>75</sup> and ethnic minorities.<sup>76</sup>

<sup>64</sup> Westminster Commission, n 7, 37-38.

<sup>65</sup> Some initiatives are working to alleviate this problem. See e.g. the Social Welfare Solicitors Qualification Support Fund (SWSQF) run by Young Legal Aid Lawyers, the City of London Law Society and Barbri. This funds SQE preparation courses and assessments (not degree stage).

<sup>66</sup> House of Commons Justice Committee, *The Future of Legal Aid: Third Report of Session 2021-22* (Her Majesty's Stationery Office, 2021). See also; Thornton, J. (2020) 'Is Publicly Funded Criminal Defence Sustainable? Legal Aid Cuts, Morale, Recruitment and Retention in the English Criminal Law Professions' 40(2) *Legal Studies* 230, 242.

<sup>67</sup> Westminster Commission, n 7, 84.

<sup>68</sup> Recent statistics show that government funding for voluntary organisations generally is at a fifteen year low, falling from £9.4 billion in 2007/8 to £6.9 billion in 2019/20.

<sup>69</sup> Newman, D & Robins, J. (2002) 'The Demise of Legal Aid'? *Access to Justice and Social Welfare Law after Austerity* 3(3) *Amicus Curiae* 448.

<sup>70</sup> Grant, H. 'Home secretary's dangerous rhetoric putting lawyers at risk' (The Guardian, 6th October 2020).

<sup>71</sup> Denvir et al, n 10, 98.

<sup>72</sup> *Ibid*, 129.

<sup>73</sup> Fleck, J., & Francis, R., (2021) *Vicarious Trauma in the Legal profession: A Practical Guide to Trauma, Burnout and Collective Care* (London: Legal Action Group).

<sup>74</sup> Eby, L. (2008) 'Does mentoring matter? A multi-disciplinary meta-analysis comparing mentored and non-mentored individuals' 72(2) *Journal of Vocational Behaviour* 254-267.

<sup>75</sup> Mundy, T. & Seuffer, N. (2019) 'Are we there yet? Best practices for diversity and inclusion in Australia' *International Journal of the Legal Profession* 1-31.

<sup>76</sup> Rider, C., Sterling, A., & Tan, D. (2016) 'Career mobility and racial diversity in law firm'. In Headworth, S., Nelson, R., Dinovitzer, R. & Wilkins, D (Eds.), *Diversity in Practice: Race, Gender, and Class in Legal and Professional Careers* (Cambridge: Cambridge University Press) 357-382.



## Equality and diversity

In the wider civil society landscape, the proportion of workers from ethnic minority backgrounds has generally decreased; while at the same time representation in the wider UK economy has risen.<sup>77</sup> Research tends to suggest higher ethnic minority representation in the legal aid and not-for-profit sectors than in other areas of law.<sup>78</sup> Notably, research also points to the problematic nature of the law, and related working practices, that are said to be 'race neutral'. For example, Cox finds that such conceptions act as a barrier 'to eradicating and challenging discriminatory practice'.<sup>79</sup> This aligns with Malkani's observations on the need for further reflection on what it means to take an anti-racist lawyering approach in the UK.<sup>80</sup> A failure to embed such an approach risks knock-on impacts in terms of experiences of professional isolation<sup>81</sup> and exacerbates the high rates of attrition for black lawyers.<sup>82</sup>

Recent studies of the legal sector generally suggest higher rates of women leaving the profession than men. For example, 15% of mid-career female associates say they will leave the legal profession in the next two years, as compared to 0% of men.<sup>83</sup> It is unclear whether this is the case in civil society organisations and historically women have been more likely to seek employment in the not-for-profit sector

due to more flexible working conditions as compared to the corporate sector.<sup>84</sup> There have been no studies to date of the experience of LGBTQI+ lawyers working in civil society organisations. In the legal profession more widely, LGBTQI+ lawyers report that despite progress in terms of 'diversity hiring', the profession is 'conservative' and influenced by an 'old guard' with a tendency to accept some LGBTQI+ identities over others.<sup>85</sup>

Research on the legal profession more widely also highlights barriers faced by disabled people with respect to recruitment, especially in relation to interactions with external recruitment agencies.<sup>86</sup> For those who requested reasonable adjustments in the workplace, 80% reported that the process caused stress and anxiety. The research also finds that disabled people are less likely to move to other organisations or apply for promotion due to a fear of losing adjustments put in place. This means that 'anticipation of discrimination' limits progression in practice; and mental ill-health is a common effect of ill-treatment related to being disabled.<sup>87</sup>

The cost of living crisis has drawn attention to the disparity between different groups' ability to deal with rising prices. Research shows that

<sup>77</sup> Preston, R. Ethnic minority in charity sector decreasing (Civil Society, 8th July 2022). Available at [www.civilsociety.co.uk/news/ethnic-minority-representation-in-charity-sector-decreasing-government-figures-show.html](http://www.civilsociety.co.uk/news/ethnic-minority-representation-in-charity-sector-decreasing-government-figures-show.html).

<sup>78</sup> Pleasence, P. et al, *A Time of Change: Solicitors' Firms in England and Wales* (The Law Society, Legal Services Board, Ministry of Justice, 2012) 6.

<sup>79</sup> Cox, A. *Race consciousness and the law: criminal defence practitioners' perspectives* (Howard League for Penal Reform, 2023) 1.

<sup>80</sup> Malkani, B. *The pursuit of racial justice through legal action in the UK: an overview of how civil society has used the law 1990-2020* (The Baring Foundation, 2021) 29. Available at [cdn.baringfoundation.org.uk/wp-content/uploads/BF\\_Pursuit-of-racial-justice-through-legal-action\\_WEB\\_lr.pdf](http://cdn.baringfoundation.org.uk/wp-content/uploads/BF_Pursuit-of-racial-justice-through-legal-action_WEB_lr.pdf).

<sup>81</sup> See e.g. Russell, M. (1997) 'Beyond "Sellouts" and "Race Cards": Black Attorneys and the Straitjacket of Legal Practice' 95(4) *Michigan Law Review* 766.

<sup>82</sup> n 76.

<sup>83</sup> Thomson Reuters, *Law firms competing for talent in 2022: will lawyers stay or will they go?* (Georgetown Center for Ethics and the Legal Profession, 2022). Available at [www.thomsonreuters.com/en/reports/law-firms-competing-for-talent-in-2022.html](http://www.thomsonreuters.com/en/reports/law-firms-competing-for-talent-in-2022.html).

<sup>84</sup> Research points to women having values wider than 'conformity or the exclusive drive for short-term profit'. See, Webley, L., & Duff, L. (2007). Women Solicitors as a Barometer for Problems within the Legal Profession: Time to Put Values before Profits? 34(3) *Journal of Law and Society* 374–402, 399.

<sup>85</sup> Ricciardo, A et al. (2021) 'Perceptions of LGBTQI+ diversity in the legal profession: 'it's happening slow, but it's certainly happening' 46(2) *Alternative Law Journal* 100.

<sup>86</sup> Foster, D. & Hirst, N. *Legally disabled: The career opportunities of disabled people working in the legal profession* (Cardiff University Business School, 2020) 7.

<sup>87</sup> Ibid, 8-9.

even after accounting for employment status, in-work disabled people are more likely than the rest of the population to struggle with rising energy and food prices.<sup>88</sup> Women have also been disproportionately impacted by the cost of living crisis due to a number of factors, including a higher likelihood of lone parenting and caring responsibilities.<sup>89</sup> Initiatives that seek to support staff members with work-life balance and wellbeing, with recognition of protected characteristics, may go some way in minimising the risk of burnout and raising rates of retention.

<sup>88</sup> El Dessouky, O. & McCurdy, C. *Costly differences: living standard for working-age people with disabilities* (Resolution Foundation, January 2023). Available at [www.resolutionfoundation.org/app/uploads/2023/01/Costly-differences.pdf](http://www.resolutionfoundation.org/app/uploads/2023/01/Costly-differences.pdf)

<sup>89</sup> See e.g. Engender, *Women and the cost of living: A crisis of deepening inequality* (Engender, October 2022). Available at [www.engender.org.uk/content/publications/Women-and-the-cost-of-living---updated-copy.pdf](http://www.engender.org.uk/content/publications/Women-and-the-cost-of-living---updated-copy.pdf).

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## Conclusions

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It is inescapable that low rates of remuneration adversely impact the recruitment and retention of mid-career lawyers in civil society organisations. Perhaps, as compared to other areas of civil society employment this is exacerbated by clearer 'escape routes' available for qualified lawyers who, as a result of the cost of living crisis, rising housing costs and the need for financial security, may pursue employment opportunities elsewhere in the wider public sector (e.g. Crown Prosecution Service, government agencies, judiciary) or in commercial environments.

This review has shown wider related issues and, taken together, the following three key themes have been identified as drivers of recruitment and retention challenges at the mid-career stage:

- 1. precarious working conditions and comparatively low rates of pay;**
- 2. wellbeing issues;**
- 3. progression and succession planning.**

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## Next steps

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Funders play an important role in capacity building for grantees to enable leaders and others to receive support, knowledge and training, especially in order to safeguard their mental health and also help safeguard and clients and communities they serve.<sup>90</sup> In view of the three interrelated issues of precarious working, wellbeing and progression / succession planning highlighted above, the following suggestions are made for strengthening the sector in future.

### 01

#### **Intergenerational mentorship opportunities**

Intergenerational mentoring could have positive impacts both for mentors and mentees. Well supported peer-to-peer networks may serve to recognise symptoms of stress and burnout at an earlier stage and therefore help to facilitate earlier interventions for staff at risk of leaving the sector. The exchange of learning in terms of highlighting how, for example, different pressures have been successfully overcome in the past or how to respond to particular experiences of injustice (both as individuals and with communities and groups) could inform sustainable ways of working for projects and casework in future.

### 02

#### **Mid-career community of practice**

There are several initiatives available to strengthen the cohort of lawyers in the mid-career stage through leadership, knowledge exchange and management training.<sup>91</sup> A community of practice specifically tailored to lawyers working in civil society organisations could provide an opportunity for in depth engagement and sharing learning. As this review suggests, it is often difficult to differentiate the issues faced by the legal aid and not-for-profit sectors. However, a community of practice could provide a forum to address the more specific challenges of managing interrelated aspects of, for example, casework, policy and campaigns. This also allows specific wellbeing issues to be addressed and could provide avenues for mentorship opportunities.

### 03

#### **Extended funding terms applicable to recruitment of positions**

Short-term project based funding for lawyers can make it more challenging to embed support systems and provide opportunities for growth. There is a risk that lawyers are viewed as expendable, rather than considering the longer term social change impact that a motivated and well-supported lawyer might have across the longevity of their career. Extended terms of funding for legal positions might strengthen organisational capacity by reducing precarity and enhancing wellbeing, thus also strengthening organisational stability.

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<sup>90</sup> People's Health Trust, 'We were absolutely invisible: the impact of Covid-19 on the mental health of grassroots, voluntary and community organisations' (June 2022) Available at <https://www.peopleshealthtrust.org.uk/publications/reports/we-were-absolutely-invisible-the-impact-of-covid-19-on-the-mental-health-of-grassroots-voluntary-and-community-sector-workers>

<sup>91</sup> E.g. Legal Aid Practitioner's Group Management and Leadership Programme; Clore Social Leadership Programme.

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## 04

### **Supporting the development of legal education and research in areas with low levels of recruitment**

Current mid-level recruitment issues have been overwhelmingly impacted by low levels of new recruits in the sector. This is due to both the lack of available training opportunities and low levels of awareness of the possibility of a career in the field due to the poor track record of law schools, and related careers departments, to educate and inform all students about wide ranging areas of legal practice. Funders may wish to consider the possibilities in this space for funding doctoral students (to enhance new research and therefore increase teaching capacity); or bursaries and fellowships for legal study aimed at working in civil society organisations in future, as is common in the US and elsewhere.

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## 05

### **Civil Society Sector Loan Forgiveness Programme**

The cost of legal education is considerable and exacerbates mid-career recruitment and retention issues, especially to lawyers from lower socio-economic backgrounds, thus risking the diversity of the profession. In view of comparatively low salaries, loan forgiveness schemes exist in the US whereby graduating students receive loans to pay off law school debt when they graduate and thereafter remain in public interest employment for more than three years.<sup>92</sup> Eligibility is based on levels of income and public interest employment.

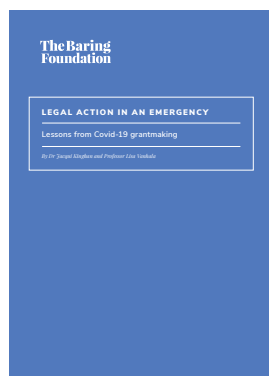
The UK Government has recently announced another review of legal aid in England and Wales;<sup>93</sup> and it is important for civil society organisations to continue to advocate strongly for adequate state funded provision of legal advice and representation, as well as related funding for training supervision. In the shorter term, it is hoped that active collaboration between civil society organisations, lawyers and funders will continue to strengthen the sector in order to strategically improve outcomes for those experiencing discrimination and disadvantage.

<sup>92</sup> American Bar Association, Student Loan Repayment and Forgiveness Programme. See [www.americanbar.org/groups/legal\\_education/resources/student\\_loan\\_repayment\\_and\\_forgiveness](http://www.americanbar.org/groups/legal_education/resources/student_loan_repayment_and_forgiveness).

<sup>93</sup> Ministry of Justice, Civil Legal Aid Review (30th January 2023), [www.gov.uk/guidance/civil-legal-aid-review](http://www.gov.uk/guidance/civil-legal-aid-review).

# Baring Foundation resources

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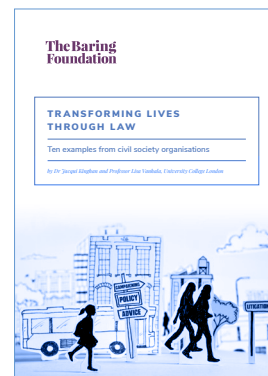
Legal action in an emergency: Lessons from Covid-19 grant-making  
**Dr Jacqui Kinghan and Professor Lisa Vanhala**  
 2022



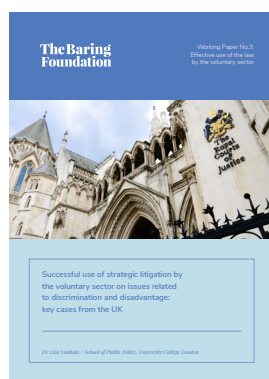
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**Dr Bharat Malkani, School of Law and Politics, Cardiff University**  
 2021



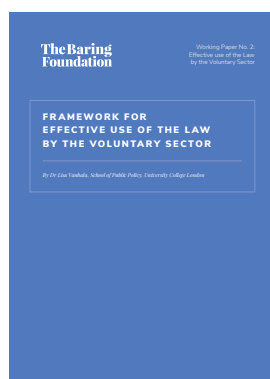
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