

Research Briefing

December 2022



Accessibility and availability of legal aid during the pandemic: evidence review

Background

Legal aid allows people who would not otherwise be able to afford it to get help for their legal problems. The Scottish Legal Aid Board (SLAB) is responsible for managing legal aid in Scotland. We manage the day to day running of legal aid through our assessment of large volumes of legal aid applications and assessing and paying accounts submitted by solicitors and advocates.

The majority of legal aid solicitors in Scotland are in private practice; however we also provide a direct advice and representation service through a small network of publicly employed solicitors: the Public Defence Solicitors' Office (PDSO), Civil Legal Assistance Offices (CLAO) and a 24 hour Solicitor Contact Line which facilitates and delivers advice for suspects in police custody across Scotland.

One of our functions is to monitor the availability and accessibility of legal services in Scotland. This report contributes to this function, with a focus on immediately post-restriction Scotland.

Aims

The aim of this research was to undertake a small scale review of the availability and accessibility of legal aid solicitors during the Covid-19 pandemic. Whilst the whole period is covered, the focus of the report is on the position in Spring 2022 when most restrictions were lifted.

The definitions of availability and accessibility are around:

- 'availability' - 'were solicitor firms operating?' 'were operations limited compared to pre pandemic norms?' (e.g. range of services provided, limits to areas of law taken on, number of solicitors at work), and
- 'accessibility' - 'were clients / potential clients able to make contact?', 'was contact as effective as pre pandemic?', 'was the range of services / support as wide as pre pandemic?'

Method

This research used key sources of data collected by us during the period 2019-20 to 2021-22. Some of these were collected specifically in relation to the impact of the pandemic, whilst others are collected routinely. We also used the ‘impact of the pandemic’ solicitor surveys undertaken by the Law Society of Scotland during 2020 - 21. Our research was largely undertaken in May and June 2022.

Pandemic context

Table 1 below gives an overview of the pandemic restrictions in place in Scotland from March 2020 to April 2022¹.

Table 1: Covid-19 in Scotland - key events

Year	Date	Event
2019-20	March 1 - 24	March 1 - first case of Covid 19 confirmed in Scotland. March 24 - lockdown begins in Scotland
2020-21 (Year 1)	March 25 - May 28	Lockdown phase (some restrictions lifting e.g. leaving house more than once a day)
	May 29 - June 18	Scotland in Phase 1 of Route Map out of Covid
	June 19 - July 9	Scotland in Phase 2 of Route Map (with staged changes and some localised differences)
	July 10	Scotland moves to Phase 3 of Route Map (with staged changes, including both decreased and increased restrictions and some localised differences)
	25 Sept, Oct 7, Nov 2	Increased restrictions announced
	Nov 2	Five level strategic framework introduced
	Jan 5	Lockdown begins
2021-22 (Year 2)	April 2	Stay at home rule replaced by stay local rule
	April 26	Travel restrictions within Scotland lifted
	May 17, July 19	Restrictions eased further (some localised)
	Dec 27	Further restrictions implemented
	Jan 11	Further restrictions lifted
	April / May	Most restrictions lifted , contact tracing ends, shielding list ends

¹Key activities taken from ‘timeline of the coronavirus (Covid-19) in Scotland’ on 17/5/22. This is published by the Scottish Parliament Information Centre (SPICe). <https://spice-spotlight.scot/2022/05/20/timeline-of-coronavirus-covid-19-in-scotland/>

Findings

Summary of findings

Taken together, the evidence available does not suggest that access to legal aid overall was significantly worse in Spring 2022, compared to pre-pandemic. Although the numbers of applications and active practitioners were lower than in 2019-20, both this, and the partial recovery in the second year of the pandemic, appears largely to reflect very significant changes in patterns of need for legally aided services, flowing from the wider impact of, and responses to, the pandemic.

Meanwhile, our surveys of recipients of civil and criminal legal aid do not suggest a concerning impact on finding, or using, a solicitor. There was also some evidence that accessibility may have improved for some people, due to firms' continued use of new contact methods introduced during the pandemic. Table 2 below outlines the findings from different data sources.

Table 2: Summary of findings

Info source	Key findings
SLAB data on numbers of applications & intimations (p.4)	Reduced activity during the pandemic, picking up slightly in year 2.
SLAB data on average number of payments (p.6)	Overall rise in year 2, compared with year 1, due to increased numbers of criminal payments
SLAB data on numbers of active practitioners & firms, applications and activity levels (p.7)	Numbers of active practitioners reduced during the pandemic, picking up somewhat in year 2. Application levels were mixed, likely driven by demand-side impacts of decisions on prioritisation and restriction of wider activity in society, economy and justice system Children's activity levels returned to year 0 levels.
SLAB surveys of assisted persons (p.9)	Ability to find a solicitor was unchanged amongst criminal clients. For civil clients it was more difficult, likely reflecting court restriction on civil.
Complaints received by SLAB involving difficulty finding a solicitor (p.13)	Increased in 2020, falling steadily in 2021 and first three months of 2022. Remaining higher than pre-pandemic
Law Society surveys of solicitors (p.14)	Expectation of change in business, using a wider range of delivery methods. Increased options for remote delivery.

Trends in legal assistance

SLAB continually monitors trends in the numbers of firms, solicitors, applications and grants of legal aid. In recent years, year on year falls in the number of active solicitors and firms have occurred amongst all aid types. Figures for the period 2019-20 to 2021-22 suggest that this overall trend is continuing.

Applications

Comparing legal assistance application figures for 2019-20 with those for 2021-22 showed that numbers of applications and intimations for most aid types remained lower than in 2019-20. Overall, this was unsurprising, given that various levels of restrictions were in place throughout 2021-22 (Table 1 earlier).

However, not all aid types were negatively impacted by the pandemic. For criminal legal aid, the number of solemn applications in 2020-21 was 12% higher than in 2019-20 and grew by a further 2% in 2021-22. Solemn cases were prioritised during the pandemic, with remote juries being used from September 2020, until gradually being phased out over Summer 2022.

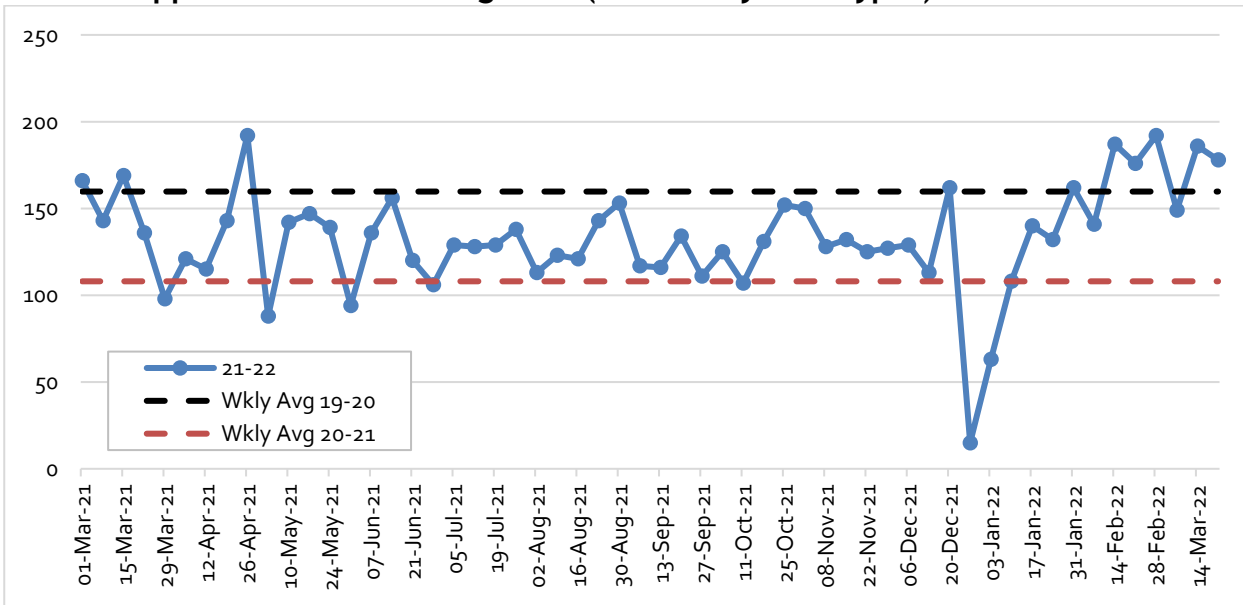
In civil legal assistance, intimations relating to mental health advice & assistance were 8% higher in 2020-21 than in 2019-20, with that elevated level broadly maintained during 2021-22. In 2021-22, applications for civil sanctions and extensions were also higher than in 2019-20. This is likely to be due to some civil cases taking longer and being more complicated, triggering a rise in sanction and extension requests by firms.

During the pandemic, family law cases, especially those involving children, were prioritised by the Scottish Government. By contrast many non-family civil case types were less likely to be heard. For instance, tenants were largely protected from eviction during the pandemic, and adults with incapacity orders were extended, or prevented from expiring, for a six month period.

The situation as at Spring 2022 relating to applications remained influenced by the pandemic, even whilst most restrictions were removed. For instance, a large increase in applications relating to adults with incapacity in latter months was likely due to their displacement by six months, in line with coronavirus legislation.

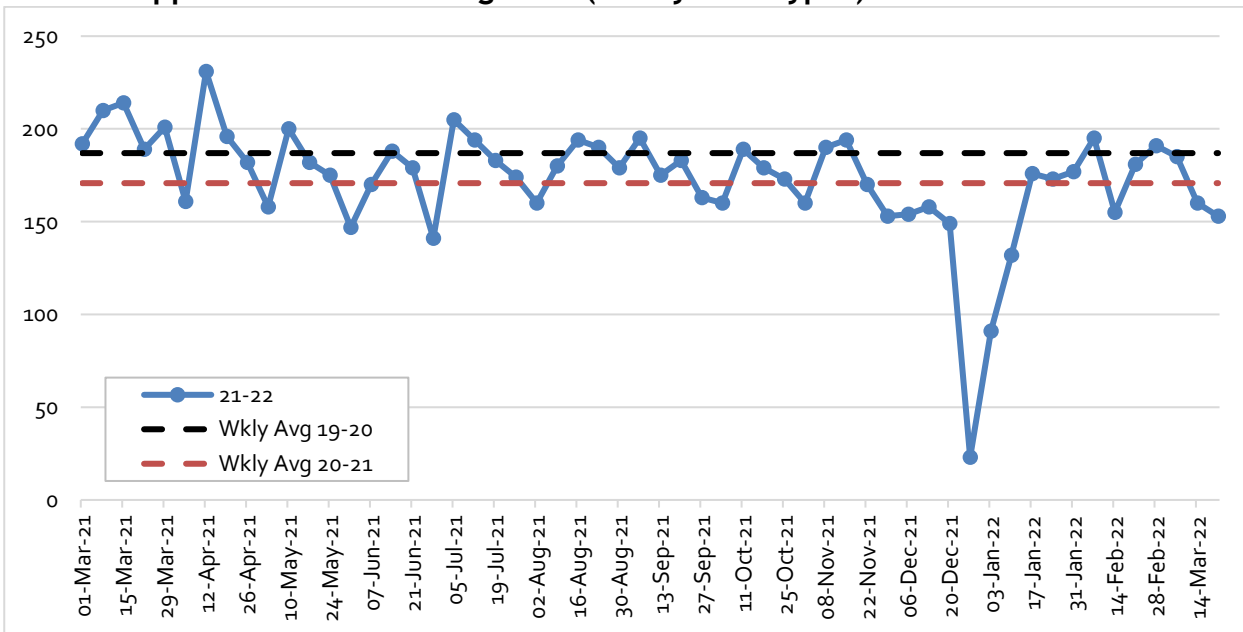
Chart 1 (overleaf), showing volumes of non-family applications in civil legal aid, demonstrates an overall rise to March 2022. This was largely driven by adults with incapacity, which is the largest 'non-family' category. This chart also illustrates the difference in weekly average numbers of applications between 2019-20 and 2020-21; these were lower by roughly one third in 2020-21.

Chart 1: applications for civil legal aid (non-family case types)



Meanwhile, civil family applications fell by less than 10% between 2019-20 and 2020-21. Chart 2 shows that applications for family legal aid case types had not risen as a result of most pandemic restrictions ending.

Chart 2: applications for civil legal aid (family case types)



There are differences in recovery by aid type and case type. There may also be differences underlying the overall experience, for example by geographic area, or for specific groups. We continue to monitor civil legal assistance applications. As well as looking at provision of legal assistance overall, we explore sub-topics, as needed and

where possible. For example we might look at: geographic location, specific case types or grants of legal aid with / without a contribution. Where relevant we also investigate the impact of external factors, such as the economic downturn.

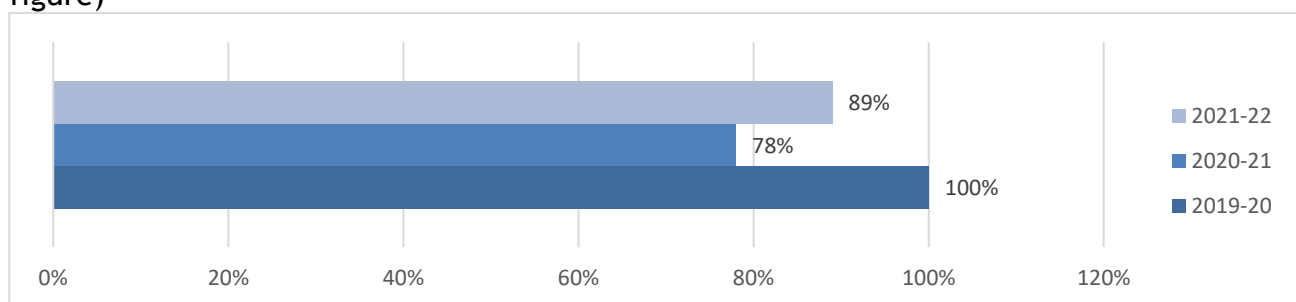
Payments

Given these patterns in new business, and the impact of court restrictions on existing cases progressing or concluding, it is unsurprising that average weekly payments made to firms were considerably lower in 2020-21 than in 2019-20. Despite rising by 19% compared to the previous year, payments did not rebound fully to pre-pandemic levels during 2021-22 (Chart 3).

The rise between 2020-21 and 2021-22 was due to an increase in criminal case payments. While total criminal payments during the year were still lower than 2019-20, the partial recovery in 2021-22 has continued and weekly payment levels have closely tracked the pre-pandemic position during the first half of 2022-23, reflecting the continued growth in the capacity of the wider criminal justice system.

Civil and children's payments in 2021-22 were lower than in both the previous years. For advice and assistance and ABWOR, this largely reflects fluctuations in the flow of immigration and asylum cases. By contrast, many types of civil legal aid cases can take years to resolve, so payments may not have been seen for many ongoing cases. Nevertheless, total payments to solicitors for civil legal aid were in fact *higher* in 2021-22 than in both 2020-21 and 2019-20. Civil payments as a whole (including advice and assistance/ABWOR) also rose steadily throughout 2021-22, such that by the end of the financial year they were broadly in line with the pre-pandemic weekly average. The most recent figures (November 2022) show that this has remained the case.

Chart 3: Payments made to firms (average payment level as a percentage of 2019-20 figure)



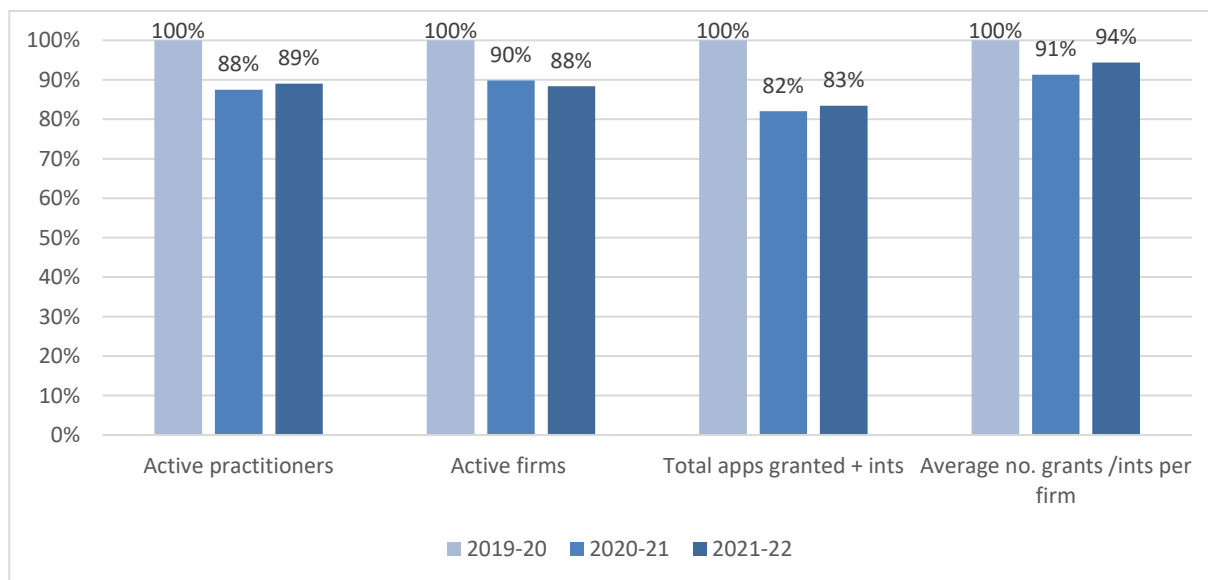
Active providers

As with payments, patterns in the numbers of active providers² have been broadly in line with those relating to applications and court activity. There were more active civil and criminal solicitors in 2021-22 (pandemic year 2) than there were in 2020-21 (pandemic year 1), but in both years there were substantially fewer than in the pre-pandemic year. The numbers of active firms, and numbers of children’s solicitors, fell slightly over the same period.

As Charts 4 to 6 (below and next page) illustrate, the number of active firms and practitioners fell less significantly than the number of cases (other than in relation to children’s practitioners). This means that, despite recovering somewhat in the second year, the number of grants/intimations per active firm remained lower in 2021-22 than it had been in 2019/20.

This might suggest that the lower number of active practitioners still had sufficient capacity to meet the lower still levels of demand during the pandemic. Alternatively, the challenges of delivering a service over this period may have meant that individual firms and solicitors may have been able to take on fewer cases, or the annual totals may disguise periods of very low activity (when many solicitors were furloughed, court activity was most severely constrained and other measures reduced the need for help) followed by more intense periods of activity.

Chart 4: Criminal legal assistance: active practitioners, firms, cases and average cases per firm (percentage of 2019-20 figure)



² In this section, practitioners are defined as ‘active’ in a year if they have applied for legal aid, or submitted an intimation of advice & assistance. Firms are ‘active’ if they have one or more active practitioners.

Chart 5: Civil legal assistance: active practitioners, firms, cases and average cases per firm (percentage of 2019-20 figure)

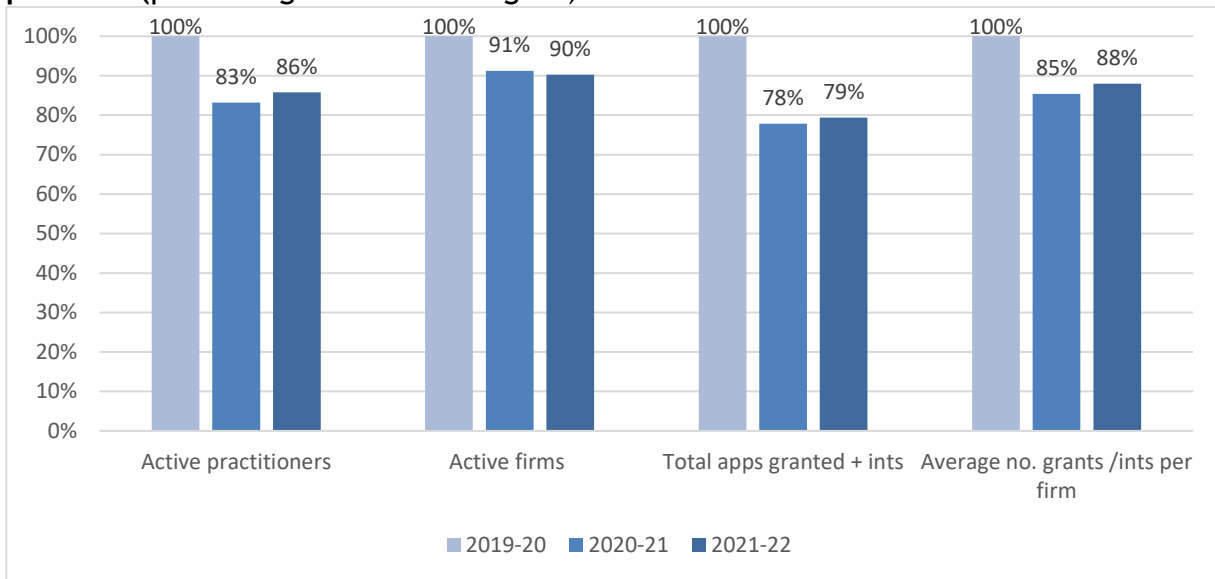
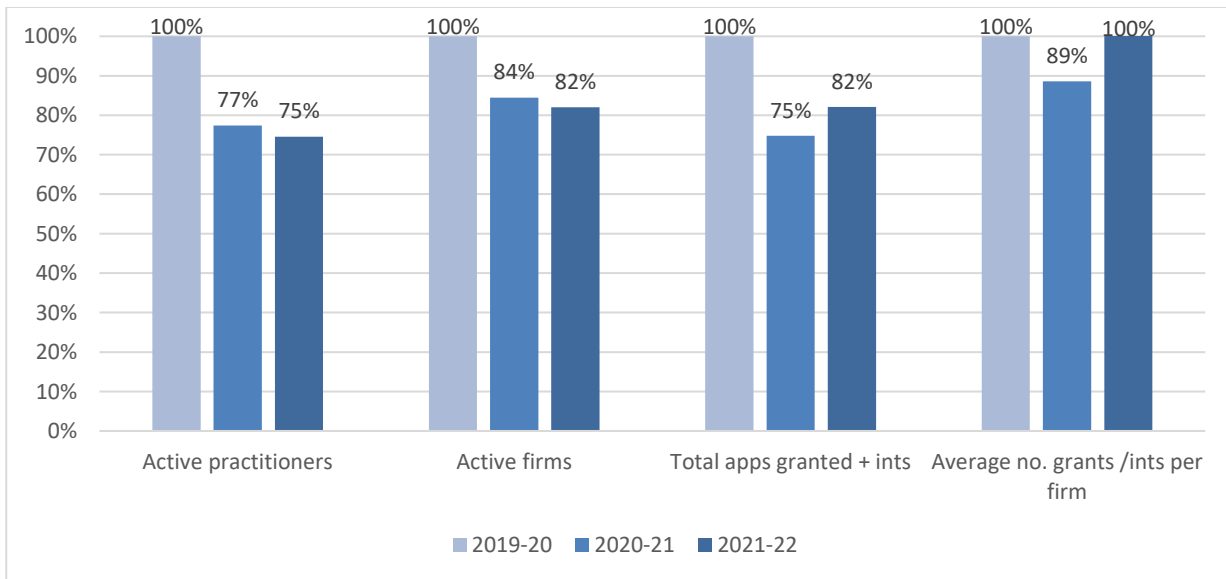


Chart 6: Children’s legal assistance: active practitioners, firms, cases and average cases per firm (percentage of 2019-20 figure)



Client experience

During 2021-22 we surveyed people who had had legal assistance at some point during the pandemic. The responses to these surveys suggested that criminal legal assistance clients did not experience additional difficulties finding a solicitor during the pandemic. Those who had, or sought, civil legal assistance were somewhat more likely to have had difficulties, compared with previous surveys of this group.

Criminal legal assistance

The first group to be surveyed was recipients of criminal legal assistance, from either a PDSO solicitor or a solicitor in private practice. Findings from these surveys are published on [our website](#).

Generally, criminal legal aid clients did not appear to have experienced difficulty in finding or using the services of a solicitor during the pandemic. Ten people (5% of those who gave an opinion³) experienced difficulty finding a private practice solicitor to help them. This is identical to the, pre pandemic, private practice criminal client survey undertaken in 2018.

Amongst those who used the PDSO, five people (11% of those who gave an opinion) experienced difficulty finding a solicitor to help them. This is a higher proportion than amongst private practice clients⁴. However it is in line with SLAB's experience, that those without previous experience of the criminal justice system face more difficulties in finding a solicitor. PDSO clients are considerably more likely to be new to the criminal justice system (52% of PDSO survey respondents), compared to those using solicitors in private practice (35% of survey respondents).

We asked people about the methods they used to contact their solicitor, and how good they felt these were. We don't have data on contact methods used previously; however the 2021 survey responses show that face to face, email, phone calls, video calls, texting, messaging and letters / postal were all used. This suggests that access was being actively supported by the use of a wide range of contact methods.

Overall, phone calls, face to face and letters / postal were the most commonly used methods by criminal legal assistance clients. Although most respondents had a face to face meeting with their solicitor at some point during their case, not all did. Not having a face to face meeting did not have an impact on overall satisfaction with the solicitor's service.

Most respondents to both surveys had their case heard at court. Over 85% were satisfied with how their solicitor represented them at court, although a sizeable minority felt that they were 'never' or 'hardly ever' able to speak to their solicitor

³ Did not answer 'don't know' or skip the question.

⁴ We did not ask this question to PDSO clients previously, so we can't make a direct comparison.

privately at court. We did not ask this question in previous surveys so we cannot make comparisons with the situation pre-pandemic.

Although we didn't ask specifically about the ease of contacting their solicitor, 85% of PDSO clients and 84% of private practice clients thought the overall service they received from their solicitor was 'good' or 'very good', with only 5% and 6% respectively rating it negatively. This shows that the majority were satisfied overall, and accessibility is likely to be an important aspect of this.

Civil legal assistance

The other group we surveyed was recipients of civil legal assistance (covering both legal aid and advice & assistance), from either a CLAO solicitor or a solicitor in private practice; and CLAO contacts (those who had contacted CLAO for support but had not been taken on as a client). Key reasons that contacts cannot be taken on as clients are: they are not eligible for CLAO support; they do not have a justiciable problem; the individual does not remain in contact. Many CLAO contacts will go on to get help from a solicitor in private practice or another organisation, such as Citizen's Advice.

Although the majority of clients of private practice solicitors did not have problems finding a solicitor, it was a problem for 18% of legal aid clients and 15% of advice & assistance (A&A) clients. We don't have recent figures for A&A clients, but the proportion of legal aid clients finding it difficult was over twice as large as in 2017, where 8% had difficulty.

The most common reason for difficulty was 'finding a solicitor willing to take on their case'. The reasons for not taking on a case may have been due to capacity, including pandemic related, such as staff numbers or working remotely. The Law Society's first report on the economic impact of Covid-19 on firms found that, on average, they had 35% of solicitors furloughed during April / May 2020. Another reason may have been that the courts were not hearing the client's case type at the time they sought a solicitor.

Eighty-six percent of legal aid clients, and 79% of A&A clients, thought that their solicitor was easy to contact. Over 70% of both civil legal aid and A&A clients used telephone to contact their solicitor initially, with email and face to face contact also used by 6% or more people in each group. Satisfaction with the method used to contact their solicitor ranged from 70% satisfied (video links amongst A&A clients) upwards. The most highly rated method amongst legal aid clients was face to face communication (91% were 'very or fairly satisfied' with this). Amongst A&A clients the most highly rated method was telephone contact (94% were satisfied with this).

Just over a quarter of the CLAO clients surveyed had contacted another solicitor before the CLAO (28%). This is very similar to the previous survey in 2018. Compared

with CLAO clients, CLAO contacts were far more likely to have contacted another solicitor first (60% did so). This is considerably higher than in 2018, where the figure was 43%. However it is broadly in line with how we anticipate CLAO's services being used. Their role includes signposting (to other solicitor firms or other services), and this is likely to have been more in demand when advice agencies or private practice firms were providing a more limited service, or were closed.

Telephone was the most common method for first contact with the CLAO for both clients (78%) and contacts (66%). Email was the second most common (used by 13% overall), with a further 13% having another person contact the CLAO on their behalf (method not given).

Telephone was also the preferred method for clients who contacted the CLAO during their case (contacts were not asked this question). No-one mentioned video-link as a preference; however at least one person mentioned all the other options (including 'in person' and 'letter/postal', as well as those noted above), showing that they are all valued to some extent.

The majority of both clients (86%) and contacts (75%) found it 'very or fairly easy' to contact the CLAO. Clients were asked how much they agreed or disagreed that it was easy to get hold of their solicitor; 83% agreed with this statement.

Client voices

Respondents to all the surveys were invited to give comments in their own words, in response to various questions. These are useful as they give an insight into what the main issues were for individuals in their experience of seeking and using legal assistance.

Unsurprisingly, many people (across civil and criminal legal assistance) mentioned specific details of their case, often feeling that things hadn't gone the way they should have done, either in the outcome or the handling of the case in general. These insights are difficult to categorise, as they can't easily be linked to any specific need for change or improvement.

Respondents to both of the criminal client surveys often commented positively on their individual solicitor. Where specifics were mentioned, "explaining things" was seen as very important for a positive experience. Not having things explained appeared to impact on trust (notably in the process) as well as understanding.

Criminal legal assistance clients made very few comments about finding or accessing a solicitor. This suggests that accessibility issues did not figure largely in their view of the experience.

As noted earlier, 18% of private practice civil legal aid clients had some level of difficulty finding a solicitor, whilst 28% of CLAO clients had contacted another solicitor before the CLAO. Whilst most respondents made no comment, or were positive, civil legal aid clients (including CLAO contacts) were more likely than criminal clients to mention problems with availability of, or access to, solicitors.

Specific issues raised on this topic included:

- Identifying or finding legal aid solicitors ('a publicly available list of legal advisers in one place', 'Knowing where to look/go');
- Finding a solicitor with relevant expertise ('experience in dealing with historical cases', 'More solicitors with expertise in environmental law');
- Finding a local solicitor ('solicitors in Aberdeen don't offer any [legal aid] work', 'better advertising for local solicitors, as well as the services they provide');
- Contacting their solicitor ('Actual face to face meetings and not phone calls', 'I had issues contacting solicitor');
- Support for specific needs ('translator', 'I have health problems', 'more support ... to find and contact, I am over 70 and find the whole process ... difficult').

Some specified that issues were related to the pandemic, 'it was more to do with the pandemic and offices struggling', 'due to Covid, nobody answered the phone'.

However, most civil respondents didn't note any problems in finding or contacting a solicitor. Some also commented that the process was 'fine' or 'very easy' for them.

Experiences of different groups

We used the responses to our client surveys to explore differences between groups by the characteristics we asked about in the surveys (including both a subset of protected characteristics and other characteristics).

For criminal clients (using combined datasets due to small numbers) we looked at the protected characteristics of: age group⁵; ethnicity⁶; whether day to day activities were limited due to health reasons and sex; as well as: rurality⁷, care experience⁸ and previous experience of the criminal justice system⁹. There were no significant

⁵ '18-44' compared with 45 and over.

⁶ Other compared with White. The 'Other' group consisted of only seven people, making conclusions less reliable.

⁷ Rural compared with urban (two fold Urban / Rural classification).

⁸ Current / previous care experience, compared with not care experienced.

⁹ Numbers of prosecutions including the one in the survey: one compared with two or more.

differences in response to the question ‘Thinking about your most recent closed case, was it difficult to find a lawyer to help you?’

For those using a private practice solicitor in relation to a civil matter we looked at responses to the question ‘How easy or difficult was it to contact your solicitor?’. Due to response numbers, we were able to look at legal aid clients and those who had A&A separately. We explored differences by: age group; disability status¹⁰; ethnicity; and sex; plus care experience. No significant differences were found.

For the CLAO client sample we did not ask directly about difficulty finding a solicitor. The question “How far do you agree or disagree with the statement ‘It was easy to get hold of my solicitor?’” gives us an idea of whether people had difficulties accessing the solicitor they were using. We explored differences by: age group; disability status; ethnicity¹¹; and sex; plus care experience. No significant differences were found.

Complaints

The majority of people surveyed were those who had succeeded in getting legal assistance or other support. Evidence of those who are unable to get support is less easy to identify. We record queries or complaints from applicants, solicitors and others, including those who contact us about difficulties finding a solicitor. Frequently, difficulty finding a solicitor is part of a wider issue that someone has contacted us about.

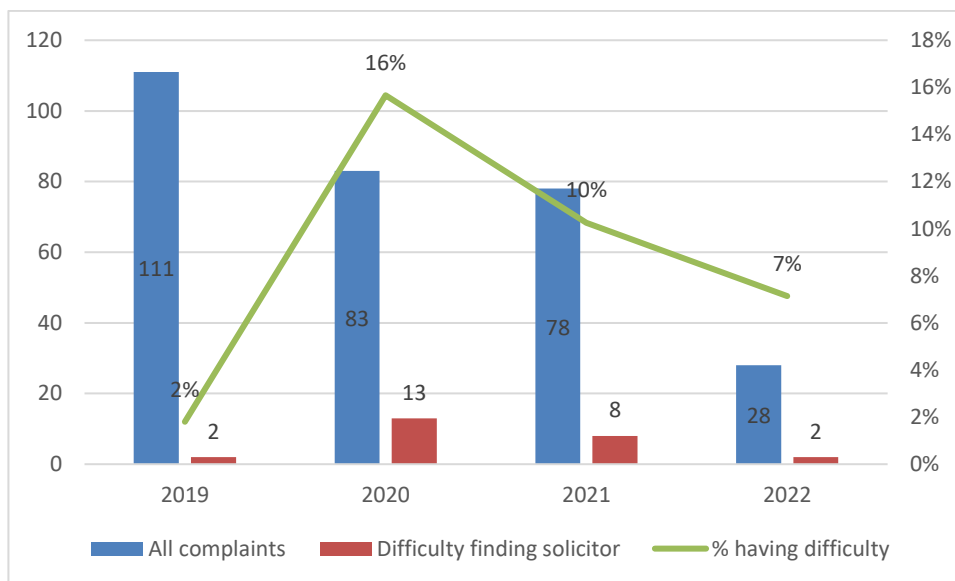
For most of these queries and complaints, we have no information about the details of the problem or the financial status of the applicant. This means it is impossible to say how many of those contacting us with difficulties finding a solicitor would have been eligible for legal aid.

Chart 7 overleaf shows that complaints which included an element of difficulty finding a solicitor increased notably in the first year of the pandemic, from 2% to 16% of those received. They appear to be decreasing (to 7% in May 2022), although not to the level seen pre-pandemic.

¹⁰ Based on the Scottish Government’s approach which involves combining responses to two questions (possession of disability, condition or longterm illness and whether day to day activities are limited due to a health problem or disability). Those who have a condition and whose activities are limited are likely to be classified as disabled under the Equality Act 2010.

¹¹ The ‘Other’ group consisted of only nine people, making conclusions less reliable.

Chart 7: Complaints mentioning difficulty finding a solicitor 2019 - 2021 and 2022 (Jan-May)



Solicitor views

The Law Society of Scotland undertook a number of solicitor surveys during 2020 and 2021. Three of these explored the economic impact of the pandemic on private practice firms, and were conducted through telephone interviews with cashroom managers at firms. It is likely that many of these firms will not provide legal aid, however this does give a direct insight into the impact on the profession overall, including moving out of the pandemic.

The most recent survey was published in November 2021. It found that 49% of respondents (66 of 136) felt that workloads had increased compared to before the pandemic, although 27% (37 of 136) noted a decrease in workloads.

The majority of firms also expected their workload to increase in the following 12 months. Perhaps unsurprisingly, expectations on turnover were similar to those on workload. Forty-six percent (63 of 136) expected that their turnover would increase in the next 12 months, with 13% (17 of 136) anticipating a decrease.

Firms also expected to implement a range of changes in how business is delivered post pandemic, in response to client expectations. Less reliance on face to face contact and more video calls were mentioned, as well as higher availability and faster responses, which may be related to the expectation that there will be an investment in technology by firms. These steps would potentially increase client options, with the opportunity of using solicitors outwith a local area, without the need for either party to travel.

However, at least one respondent did raise issues about future criminal legal aid provision. Remuneration and difficulties attracting newly qualified solicitors were mentioned in this context.

Conclusions and next steps

The evidence available does not suggest that the pandemic has caused significant on-going difficulty for people trying to access a legal aid solicitor. However, we are aware that this evidence gives only an overall picture. There may be specific groups who will have increased difficulty accessing a solicitor. For example, in specific geographical locations, for certain case types, or in relation to access to, or use of, digital delivery.

We will continue to monitor this, using evidence that we gather ourselves, as well as that from other sources.

Further information

If you would like further information about this research please contact SLAB's Research Team at research@slab.org.uk

SLAB's research publications are available on our website at:

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