

RESEARCH ARTICLE

# ‘Fat-cats’ versus ‘church mice’: unveiling legal aid practice from behind the shadows of private legal practice in England and Wales

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## Abstract

This paper calls for the lawyering profession – which is often viewed as unabridged – to be reframed into two distinct occupations: legal aid practice and private practice, to better incorporate the divisions in labour. In order to better understand contemporary legal aid work and its workers, the hidden realities must be unveiled from behind their private counterparts, which opposingly signify wealth, professionalism, autonomy and privilege. Set within a context of crumbling professional identities, a shrinking industry and financial constraints, the paper draws on ethnographic and interview data. It finds that those working in legal aid undoubtedly face a more stagnated, under-resourced and precarious working environment, which means that their professional experience is vastly different from their private counterparts. Likewise, those in the field face toxic narratives from the government, the media, the public, and their private counterparts alike, resulting in persistent discourse of vilification. Ultimately, it calls for a refocus of legal aid work as a separate vocation due to its altruistic underpinnings, unique ‘professional’ identity, and values.

**Keywords:** public law; practice; profession and ethics; access to justice; austerity; lawyer

We cannot survive without legal aid lawyers, it’s simple. Society relies on us *so* much, but they don’t even know who we are or what it is we *actually* do. Yet, without us justice simply wouldn’t exist. (Solicitor R)

## Introduction

It is 2022, and criminal barristers across England and Wales working within the legal aid sector were forced to a halt following a dispute with the government concerning fees.<sup>1</sup> With incomes falling nearly 30% over the last two decades, criminal barristers working in legal aid now face an average annual income after expenses of only £12,200 in their first few years of practice.<sup>2</sup> In addition, there have been cuts to legal aid funding, for example criminal duty solicitor fees have not increased in

<sup>†</sup>The author would like to thank Jess Mant, Lucy Welsh, and Caroline Chatwin for their invaluable suggestions and support in improving this paper, as well as the reviewers for their insightful guidance and comments.

<sup>1</sup>Ministry of Justice ‘New Justice Secretary agrees deal to get criminal barristers back to work’ (September 2022), available at <https://www.gov.uk/government/news/new-justice-secretary-agrees-deal-to-get-criminal-barristers-back-to-work>.

<sup>2</sup>Criminal Bar Association ‘Parliamentary briefing’ (2022), available at <https://www.criminalbar.com/wp-content/uploads/2022/09/CBA-Parliamentary-Briefing-31.8.22.pdf>.

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England and Wales since 1998.<sup>3</sup> Justice is likewise increasingly out of reach for the likes of housing, family, employment, and debt problems due to the lack of legal aid provision.<sup>4</sup>

For many this may seem particularly absurd. To the public eye the ‘lawyering’ profession remains elite and well-paid. The branding of legal aid lawyers as ‘fat-cats’ by Tony Blair in 2001, and Ken Clarke in 2010 has been lurking ever since. Inflammatory headlines such as: ‘500 legal aid barristers earning more than the PM’;<sup>5</sup> ‘Fat cat lawyers will be banned from mounting last-ditch appeals to stop foreign criminals being booted out’<sup>6</sup> and ‘Fat cat barristers helping criminals’<sup>7</sup> painted an unfavourable picture of legal aid work. For most, the thought of a barrister striking may seem unreasonable. Yet people continue to confuse work publicly funded by the state (legal aid) with privately funded work (client funded), and this has led to low levels of public sympathy.<sup>8</sup> Society can justify nurses, teachers and train drivers going on strike, but legal aid practice remains hidden, making strike action seem irrational. To this end, legal aid work falls under ‘the least loved arm of the welfare state’ yet operates at the frontline of the justice system.<sup>9</sup>

The impetus of this paper, therefore, is the burgeoning need to consider the significant division of labour between public and privately funded work. Whilst private practice is somewhat being eroded in light of austerity, the consequences and realities of this are significantly less than their public counterparts. Whilst those in private practice still uphold some form of professional identity – inclusive of benefits, status, and significant monetary income – those working in legal aid face significant (and aggressive) deprofessionalisation, to the point where even the main underpinning of their work – progressive practice and social remuneration<sup>10</sup> – is withering. Indeed, this proves problematic as this sense of purpose has been a key factor in sustaining the profession to date. This is the result of sustained and unprecedented challenges from the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Covid pandemic, fee arrangements and court closures, just to name a few.<sup>11</sup> Economic precarity,<sup>12</sup> working conditions, education and training, currency of client contact,<sup>13</sup> differing priorities, policy advocacy, working culture,<sup>14</sup> susceptibility to burnout<sup>15</sup> and vulnerability,<sup>16</sup> the emotionality of the

<sup>3</sup>The Law Society ‘Criminal duty solicitors: a growing crisis’ (January 2024), available at <https://www.lawsociety.org.uk/campaigns/criminal-justice/criminal-duty-solicitors>.

<sup>4</sup>The Law Society ‘A decade of cuts: legal aid in tatters’ (March 2023), available at <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/a-decade-of-cuts-legal-aid-in-tatters>.

<sup>5</sup>How crime DOES pay: 500 barristers earning more than the PM’ (*Daily Mail*, 18 June 2011), available at <https://www.dailymail.co.uk/news/article-2004915/500-legal-aid-barristers-earning-David-Cameron.html>.

<sup>6</sup>Fat cat lawyers will be banned from mounting last-ditch appeals to stop foreign criminals being booted out of Britain’ (*The Sun*, 13 March 2021), available at <https://wwwthesun.co.uk/news/14332061/ban-appeals-to-stop-foreign-criminals-deportations/>.

<sup>7</sup>Talk of “fat cat barristers helping criminals” is designed to stir up public emotion over strikes, says Bradford lawyer’ (*Telegraph and Argus*, August 2022), available at <https://www.thetelegraphandargus.co.uk/news/20717576.talk-fat-cat-barristers-helping-criminals-designed-stir-public-emotion-strikes-says-bradford-lawyer/>.

<sup>8</sup>See N Byrom ‘Cuts to civil legal aid and the identity crisis in lawyering: lessons from the experience of England and Wales’ in A Flynn and J Hodgson (eds) *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (London: Bloomsbury Publishing, 2017) p 221.

<sup>9</sup>J Freeland ‘It is worth fighting to save the least loved branch of the welfare state’ (*The Guardian*, 11 October 2006), available at <https://www.theguardian.com/commentisfree/2006/oct/11/comment.society>.

<sup>10</sup>J Kinghan *Lawyers, Networks and Progressive Social Change* (Oxford: Hart Publishing, 2021).

<sup>11</sup>C Denvir et al *Legal Aid and the Future of Access to Justice* (Oxford: Hart Publishing, 2023).

<sup>12</sup>*Ibid.*

<sup>13</sup>A Sherr ‘Professional work, professional careers and legal education: educating the lawyer for 2010’ (2000) 7(3) *International Journal of the Legal Profession* 325.

<sup>14</sup>E Cooke ‘The working culture of legal aid lawyers: developing a shared orientation model’ (2022) 31(5) *Social & Legal Studies* 704.

<sup>15</sup>L McCormack et al “‘On Thursdays I feel sad’: interpersonal and family violence, an inadequate system, and the impact of COVID-19 from the perspective of senior lawyers’ *Traumatology* (online), available at <https://psycnet.apa.org/fulltext/2024-81125-001.html>.

<sup>16</sup>S Currie ‘Working in the crossfire: legal representation of people with lived experience of human trafficking: a study of immigration legal aid lawyers in the United Kingdom’ (Monash University, 2023), available at <https://doi.org/10.26180/24521668>.

work,<sup>17</sup> political affiliation, campaigning and strategic litigation all make public lawyering distinctive from its private counterpart. As Sommerlad rightly notes, private work also significantly differs as ‘... the elite of the profession, as a privileged group saturated in class, masculinity, and whiteness, survives both materially and symbolically, still able to act as the engine room of capital and express the idea of a universal form of law’.<sup>18</sup> More than this, private clients hold much more power, as they can actively choose *and* pay for their lawyer.

Kinghan’s work is of great significance here. Her work explores progressive (public) legal practice in the UK, arguing that a movement still exists in spite of its fragmentation, outlined above. An absence of financial motivation, a sense of injustice and a view of how society ought to function are all identified as shared features of the progressive legal identity. As further noted, all participants in her study identified ‘...a compelling desire to achieve transformative results through the work they do, as well as a clear conception of justice’.<sup>19</sup> Kinghan – very usefully for this paper – draws on the ‘us and them’ dichotomy, highlighting a distinct sense of ‘otherness and opposition’ between progressive and corporate legal practice, which remains central to their collective identity.<sup>20</sup>

This supports the need for a distinct classification of the work from legal professionals, scholars, politicians, and the general public alike. This remains applicable to barristers and solicitors in both civil and criminal fields, as it is not the title or the specialism that creates differentiation – rather, it is the very nature and underpinnings of the type of legal work in its broader sense. Cooke proposed that the collective nature of publicly funded work has the ability to embrace a diverse range of practices, further emphasising that the elements of practice shift in an intersectional manner. Therefore, whilst historical divisions in status or specialism may cause variations in practice, the overarching nature of ‘transgressive’ or public lawyering – which utilises the law to realise its social justice claims – remains.<sup>21</sup>

With a central aim to reveal the inner workings of the ‘hidden’ side of lawyering, this paper explores existing scholarship on professional identities, the changing nature of work and the lawyering profession to contextualise the findings of this paper. It draws on ethnographic research with legal aid lawyers, spanning both solicitor-barrister and civil-criminal remits to provide an overarching insight into the field. Findings suggest that those working within legal aid, as opposed to private practice, face a more demarcated, under-resourced, and precarious working environment. This is permeated with toxic narratives from the government, the media, and the public alike. The reality of the work remains vastly different as remuneration comes in the form of working for the social good as opposed to the financial good, unlike their private counterparts.<sup>22</sup> Ultimately, it concludes that legal aid work should be reconceptualised as a separate vocation, given its unique position – poised between the ‘market’ and the ‘state’ – as well as its charitable underpinnings and ongoing liminality.<sup>23</sup>

This paper therefore focuses on the misconception of the legal aid profession. Following the contextual and methods sections, this paper will seek to address the following key questions: (1) Are legal aid lawyers aware of existing stereotypes and how do they feel about it? (2) Why do individuals stay working within legal aid? and (3) What is the impact of declining support and increasingly difficult working conditions on legal aid lawyering and wider society? The work of legal aid lawyers could not be further from the ‘fat-cat’ stereotype depicted by the broader political and societal sphere as

<sup>17</sup>C Westaby “‘Feeling like a sponge’: the emotional labour produced by solicitors in their interactions with clients seeking asylum” (2012) 17(2) *International Journal of the Legal Profession* 153.

<sup>18</sup>H Sommerlad “The new “professionalism” in England and Wales: talent, diversity, and a legal precariat” in S Headworth et al (eds) *Diversity in Practice: Race, Gender and Class in Legal and Professional Careers* (Cambridge: Cambridge University Press, 2016).

<sup>19</sup>Kinghan, above n 10, p 51.

<sup>20</sup>Ibid, p 114.

<sup>21</sup>Cooke, above n 14.

<sup>22</sup>Public Law Project ‘My life as a legal aid lawyer- and why I decided to leave’ (5 June 2023), available at <https://publiclawproject.org.uk/blog/my-life-as-a-legal-aid-lawyer-and-why-i-decided-to-leave/>.

<sup>23</sup>RL Abel et al *Lawyers in 21<sup>st</sup>-Century Societies: Vol 2: Comparisons and Theories* (Oxford: Hart Publishing, 2022).

to be outlined, and revealing the inner hidden realities of the work remains vital for scholarly, academic, and public domains given that the sector is at significant risk. Whilst this paper focuses on the UK context, what remains apparent is that over the last three decades, we have seen drastic cuts to legal aid, not only in England and Wales but also in the likes of the US, Sweden, Iceland, Nordic countries, as well as the Netherlands.<sup>24</sup> Therefore whilst the findings of this paper have emerged from a UK-specific context, themes may speak to other national/ international contexts; however more research undoubtedly needs to be done.

## 1. The ‘lawyer’

The lawyering profession has always been seen as unabridged; the public tend to place *all* lawyers – whether that be solicitors or barristers, publicly or privately funded – under one heading. This naturally encourages assumed extensive wealth, professional privilege, and well-regarded status. Difference in service between legal aid (public) and private work is vast; in the private sector you have time to prepare, read and advise on cases which you otherwise wouldn’t have; the physical working environments differ greatly in both size and quality; reward exists in the form of either financial gain (private), or social gain (legal aid), and the clients could not be more polarised.<sup>25</sup> The ‘fat-cat’ lawyer narrative has been used by consecutive governments to devalue the work of legal aid lawyers as part of a wider (neoliberal) programme of dismantling public services. In the new legal landscape, the sphere sees access to justice reframed as a privilege and it is one of the many public services that has been subjected to competing public interests and cuts.<sup>26</sup> Both the lawyers (‘fat-cats’)<sup>27</sup> and the clients in this context therefore face simultaneous toxic constructions, as explored below.

It has been noted that individuals should work to resolve their own legal problems, as opposed to resorting to litigation that creates ‘significant cost to the taxpayer’.<sup>28</sup> This toxic narrative, which encourages ‘responsibilisation’, is the driving force of austerity, as it suggests that those who cannot be in control of their own failings should be deprived of full participation in civil society.<sup>29</sup> The impact on this neglected sector of lawyers has been phenomenal; access to justice leans significantly on legal aid practitioners, and therefore the rule of law *would not and could not* be upheld without them as key drivers of justice.<sup>30</sup>

Lawyering is very dynamic, in the sense that professionals across the various specialisms including crime, family and civil matters, uphold varying levels of legal caseloads, and work in a variety of different workplaces, from solicitors’ offices to courtrooms, to housing centres and charity organisations. Diversity in the legal industry has evolved over the last decade.<sup>31</sup> Francis argues that ‘... the increasing variety of workplace arenas within which discrete ethical choices confront lawyers means that

<sup>24</sup>Ibid.

<sup>25</sup>J Thornton ‘Is publicly funded criminal defence sustainable? Legal aid cuts, morale, retention and recruitment in the English criminal law professions’ (2020) 40(2) *Legal Studies* 230.

<sup>26</sup>H O’Nions ‘“Fat cat” lawyers and “illegal migrants”: the impact of intersecting hostilities and toxic narratives on access to justice’ (2020) 42(3) *Journal of Social Welfare and Family Law* 319.

<sup>27</sup>D Newman *Legal Aid Lawyers and the Quest for Justice* (Oxford, Hart Publishing, 2013); L Welsh ‘The effects of changes to legal aid on lawyers’ professional identity and behaviour in summary criminal cases: a case study’ (2017) 44(4) *Journal of Law and Society* 559.

<sup>28</sup>Ministry of Justice ‘Proposals for the reform of legal aid in England and Wales’ Consultation paper CP12/10 (London: The Stationary Office, 2010), available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/228970/7967.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf); O’Nions, above n 26.

<sup>29</sup>O’Nions, above n 26. This can also be viewed through the lens of Bottoms’ ‘populist punitiveness’: A Bottoms ‘The philosophy and politics of punishment and sentencing’ in C Clarkson and R Morgan (eds) *The Politics of Sentencing Reform* (Oxford: Oxford University Press, 1995).

<sup>30</sup>The Bar Council ‘Access to justice can’t survive further budget cuts: new report from the Bar Council’ (November 2023), available at <https://www.barcouncil.org.uk/resource/access-to-justice-can-t-survive-further-budget-cuts-new-report-from-the-bar-council.html>.

<sup>31</sup>The Lawyer Portal ‘Diversity in the legal industry’ (January 2024), available at <https://www.thelawyerportal.com/diversity-in-the-legal-industry/>.

fragmentation within the legal profession is exacerbated'.<sup>32</sup> In this sense, whilst professional control may still be exercised centrally through the Legal Aid Agency, this occurs on a contingent and individualised basis, fluctuating between the varying workplace arenas. Whilst in the past we have had more regimented control – through the likes of the Law Society – as Francis notes, they no longer serve as the 'fulcrum of the profession's collective advancement'.<sup>33</sup> In this sense, negotiating the professional nature of legal aid work remains highly individualised and idiosyncratic as it spans different job titles, working environments and specialisms. This workplace diversity drives the profession as it allows for different funding models, attitudinal components, and stronger support systems to be maintained across the board in both public and private spheres. Yet, whilst in 1983 Samuel called for a clear distinction to be made between public and private legal work as it offers a valuable distinction to understand how lawyers work in different field, this is still often omitted from both academic and public remits.<sup>34</sup>

## 2. What is legal aid?

Legal aid is a publicly funded financial provision that provides access to justice and is only available for individuals who meet a very specific and strict criterion. Legal aid has faced long-term vulnerabilities ever since its implementation.<sup>35</sup> Reducing public spending comprises a manifestation of neoliberalism, undermining the professional nature of legal aid work by weakening working values and morale. The Legal Aid, Sentencing and Punishment of Offenders Act 2012,<sup>36</sup> as well as the Transforming Legal Aid Consultation (2013),<sup>37</sup> in England and Wales continue to significantly limit the scope of civil and criminal legal aid. This sustained under-cutting, coupled with demand from service users, has damaged legal aid work. Legal aid work is constantly subjected to state-constructed vulnerability, and the time dedicated to a given case is now more and more restricted by the state due to increasingly low legal aid rates. Evidently, the professional privileges which have traditionally accompanied legal practice have been eroded, as will be demonstrated below. Low salaries, low social status, disregard, and poor working and pay conditions continue to permeate the (hidden) state funded side of lawyering, whereas privately funded legal representation means that the client can choose their lawyer as they pay them directly, and therefore often receive a better quality of legal service. Public and privately funded legal work could not be more polarised.

## 3. Lawyering as a 'valued profession'

The term 'profession' has been a long-standing focus within the broader field of sociology and has been explored from Functionalist, Neo-Weberian, Marxist and Foucauldian perspectives.<sup>38</sup> Defining the term 'professional' has proved to be difficult, with functionalists arguing that professions uphold status in society, and significantly *protection from the state* as they were expected to act in the public

<sup>32</sup>AM Francis 'Legal ethics, the marketplace and the fragmentation of legal professionalism' (2005) 12(2) International Journal of the Legal Profession 175.

<sup>33</sup>AM Francis 'Out of touch and out of time: lawyers, their leaders and collective mobility within the legal profession' (2004) 24(3) Legal Studies 322.

<sup>34</sup>G Samuel 'Public and private law: a private lawyer's response' (1983) 46(5) The Modern Law Review 1.

<sup>35</sup>The Rushcliffe committee came about in 1944 to improve access to legal advice in England and Wales. This formed the first substantial foundation to legal provision.

<sup>36</sup>The LASPO Act 2012 brought about significant changes in the eligibility, scope and funding of legal aid assistance, meaning that fewer people could access legal advice. Access to many areas of the law was scrapped entirely, and the eligibility criteria for legal aid provision became considerably more stringent, meaning that many more individuals no longer qualified for help. A total of £350m was cut from the legal aid budget a year, resulting in a 46% decline in the number of cases granted funding.

<sup>37</sup>Ministry of Justice 'Transforming legal aid: delivering a more credible and efficient system' (April 2013), available at <https://www.gov.uk/government/consultations/transforming-legal-aid-delivering-a-more-credible-and-efficient-system>.

<sup>38</sup>M Saks and TL Adams 'Neo-Weberianism, professional formation and the state: inside the black box' (2019) 9(2) Professions and Professionalism 1.

interest.<sup>39</sup> Carr-Saunders and Wilson initially classified the five primary professions as: armed services, clergy, medicine, education and law, all of which produce services as opposed to goods.<sup>40</sup> Professions in this sense were typically altruistic in their nature, and the idea was that these occupational groups would help maintain a collective with a central union of ideals and values.<sup>41</sup> Professions, in other words, had the function of preventing social dysfunction.

Research following this explored 'idealised professions' which included doctors and lawyers with 'full autonomy, high social status and the power to self-regulate'.<sup>42</sup> How their services were provided was typically decided by the professionals themselves. The transformation of occupations into professions ultimately means '... an increase of power and society prestige'.<sup>43</sup> Trail-theoretical approaches later characterised professions. Mieg, for example, suggests that a profession features autonomy, abstractness and flexibility of knowledge base, altruism, and occupational control at the hands of the profession.<sup>44</sup> Egetenmeyer et al note that 'within societies, professions reach a certain power that governments respect and grant to professions'.<sup>45</sup>

Contemporary functionalists, however, soon became very critical of professions in light of increasing bureaucracy, managerialism and routinisation as administrative procedure became more and more embedded in their practice. Weber coined this the 'depersonalisation of work', as those within certain professions began to have less power and autonomy over their working practice.<sup>46</sup> Occupations that were traditionally seen as having professional privileges were beginning to be subject to more external pressures and degradation. Hostile spheres created by austerity and neoliberal governance have meant that occupations are now subject to economisation, and 'those who have no economic value find themselves disempowered and excluded'.<sup>47</sup> An increased 'responsibilisation' discourse alongside this, has pushed self-reliance, and this has affected both the lawyer and the client in the legal aid context.<sup>48</sup> Justice has been reframed as a 'privilege' for the worker and the consumer in this context, and the 'justice for all' slogan no longer seems fitting.

Not all expert work is now easy to categorise under a traditional professionalisation model, and this definition must be loosened to accompany what it means to be a liberal professional in the twenty-first century.<sup>49</sup> As Oakley and Vaughan argue, legal practice is reflective of '... complex relationships of interdependence and interconnectedness'.<sup>50</sup> Different physical working environments, funding model(s), client bases, client relationships, ethical models and distinctive attitudinal components of legal practitioners create new challenges to understanding the work.<sup>51</sup> Discussions have, therefore, moved further away from the development of 'professions', in an attempt to understand the development of 'professionalism' instead, as work has been re-organised, re-stratified, and re-located.<sup>52</sup>

<sup>39</sup>T Parsons 'The professions and social structure' (1939) 17(4) *Social Forces* 457.

<sup>40</sup>AM Carr-Saunders and PA Wilson *The Professions* (Oxford: Clarendon Press, 1933).

<sup>41</sup>See Parsons, above n 39; E Durkheim *The Division of Labour in Society* (New York: Free Press, 1933).

<sup>42</sup>See B Harrington and L Seabrooke 'Transnational professionals' (2020) 46 *Annual Review of Sociology* 399; JI Moreira 'Arbitration vis-a-vis other professions: a sociology of professions account of international commercial arbitrators' (2022) 49(1) *Journal of Law and Society* 48.

<sup>43</sup>R Egetenmeyer et al 'From "traditional professions" to "new professionalism": a multi-level perspective for analysing professionalisation in adult and continuing education' (2018) 25(1) *Journal of Adult and Continuing Education* 11.

<sup>44</sup>HA Mieg 'Profession: Begriff, Charakteristik, Zentralwerte' in MW Dick and H Mieg (eds) *Handbuch Professionsentwicklung* (Bad Heilbrunn: Klinkhardt, 2016) p 27.

<sup>45</sup>Egetenmeyer et al, above n 45, at 11

<sup>46</sup>M Weber *Economy and Society* (London: University of California Press, 1978) p 231.

<sup>47</sup>O'Nions, above n 26, at 323.

<sup>48</sup>H Sommerland and P Sanderson 'Social justice on the margins: the future of the not for profit sector as providers of legal advice in England and Wales' (2013) 35(3) *Journal of Social Welfare and Family Law* 305.

<sup>49</sup>A Bellini and L Maestriperi 'Professions within, between and beyond. Varieties of professionalism in a globalising world' (2018) 8(16) *Cambio* 5.

<sup>50</sup>E Oakley and S Vaughan 'In dependence: the paradox of professional independence and taking seriously the vulnerabilities of lawyers in large corporate law firms' (2019) 46(1) *Journal of Law and Society* 109.

<sup>51</sup>Cooke, above n 14.

<sup>52</sup>M Noordegraaf 'Reconfiguring professional work: changing forms of professionalism in public services' (2016) 48(7) *Administration & Society* 790–791.



The privileges of service and knowledge-based professions have been lost in some ways, due to funding cuts, performance indicators and the increased measurement and monitoring of activities.<sup>53</sup> The undermining of professional work by managerial and economic principles has meant that traditional characteristics are handed over to the occupation itself, including autonomy, discretion, and self-regulation. Professions are now subject to increased policies, regulations, governance, and educational demands which exceed just the fulfilment of specific attributes or specialised knowledge. As recognised, however, organisations are not static and are responsive to macro and meso-level social change.<sup>54</sup>

In this case of legal aid, a natural survival mechanism for firms struggling to stay afloat has been to hire lower-skilled workers. This has meant that skeleton arguments are now being drafted often without the right skills or knowledge due to the marketisation of justice.<sup>55</sup> This can often result in lower quality service, as accountability becomes weakened, resulting in more cases being lost. Delays, mistakes, exploitation, and increased levels of self-representation occur as a result. Clients in many areas of the country struggle to locate a legal aid professional due to legal aid cuts.<sup>56</sup> The consistent downward trend in funding, size and cost of the legal aid market, with encouragement of economy and speed over quality of delivery has damaged and continues to impair legal aid work.<sup>57</sup> Current fluctuations have forced those within the field to retreat from zealous advocacy, leaving the role somewhat 'neutered'.<sup>58</sup> What was once seen as an idealised profession, the public side of lawyering, is now crumbling and is no longer protected by professional privilege. Treating legal aid work as a 'profession', with its associated privileges, feels no longer fitting.

### Legal aid work as a 'calling'

It has been noted, in the US context, that poverty lawyers are ranked the lowest in prestige in comparison to their private counterparts, due to their '... allegedly distasteful work with the poor'.<sup>59</sup> Thornton also notes that in the context of criminal defence work, only 'successful' lawyers can do private defence, and those that are not are forced to do legal aid work.<sup>60</sup> Precarity has infiltrated the public side of the lawyering profession. Vosko defines precarious employment as: '... work for remuneration characterised by uncertainty, low income, and limited social benefits and statutory entitlements'.<sup>61</sup> Typically, it was thought that elite professions, such as lawyers, doctors and accountants, would be protected, as ascertained above; however, this is not the case for those working in legal aid. Whilst legal aid lawyers cling on to a few professional values which correlate with the privilege and status of being a legal aid lawyer – such as continuing to serve the public interest, education and training – the profession has undoubtedly been hollowed out. Provisions are depleting, working practices have become more constrained, caseloads are building, remuneration is inconsistent, and a work-life balance is non-existent. The 'profession' is gradually becoming more and more unsustainable, and combined with the backlog from the courts post Covid-19, access to justice is being denied

<sup>53</sup>J Evetts 'The sociological analysis of professionalism. Occupational change in the modern world' (2003) 18(2) *International Sociology* 395.

<sup>54</sup>P Bourdieu and L Wacquant *An Invitation to Reflexive Sociology* (Cambridge: Polity Press, 1992) p 133.

<sup>55</sup>O'Nions, above n 26.

<sup>56</sup>J Wilding 'Droughts and deserts. A report on the immigration legal aid market' (York: Joseph Rowntree Trust, 2019), available at [https://www.researchgate.net/publication/333718995\\_Droughts\\_and\\_Deserts\\_A\\_report\\_on\\_the\\_immigration\\_legal\\_aid\\_market](https://www.researchgate.net/publication/333718995_Droughts_and_Deserts_A_report_on_the_immigration_legal_aid_market).

<sup>57</sup>T Smith and E Cape 'The rise and decline of criminal legal aid in England and Wales' in A Flynn and J Hodgson (eds) *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (London: Bloomsbury, 2017) p 63.

<sup>58</sup>D Newman 'Are lawyers alienated workers?' (2016) 22(3) *European Journal of Current Legal Issues* 2.

<sup>59</sup>JP Heinz and EO Laumann *Chicago Lawyers: The Social Structure of the Bar* (Evanston, IL: Northwestern University Press, 1994) pp 58–60; S Wexler 'Practicing law for poor people' (1970) 79(5) *Yale Law Journal* 1049; D Cantrell 'The obligation of legal aid lawyers to champion practice by nonlawyers' (2004) 73(2) *Fordham Law Review* 883.

<sup>60</sup>Thornton, above n 25.

<sup>61</sup>L Vosko *Managing the Margins: Gender, Citizenship and the International Regulation of Precarious Employment* (New York: Oxford University Press, 2010) p 2.

daily.<sup>62</sup> For example, the number of cases where neither party had a legal representative rose from 13% in 2013 to 36% in 2020.<sup>63</sup>

Legal aid lawyers face a limited professional role, carrying out work which is personally confining and of both limited significance and routine. Katz recognises that tight working restrictions, discontinuities between cases and ‘unique’ clientele result in work that is often seen as insignificant.<sup>64</sup> Lack of significance is one of the biggest quandaries of human service work. In the words of Katz, ‘poverty’ typically implies that little needs to be done. Those practising in the field have extreme pressure to deal with legal problems, without making much of a difference on the wider scale: ‘... so long as he or she is poor, a person’s civil contact will rarely affect the interests of more than a small circle of others’.<sup>65</sup> The legal aid lawyer’s limited professional capacity has been further restricted because of the lack of opportunity to progress within the field, with its participants continuing to face capped progression, as will be explored below. This is the case unless professionals are willing to switch their practice area away from legal aid work. Assuming that specialisms are transferable can be problematic in the first place, as the work of the legal aid lawyer becomes increasingly generic and deskilled. Yet, lawyers working within the field continue to view their work as a ‘professional honour’ and embrace the working environment despite the hurdles they face. Boukalas argues that cause lawyers in the US context have been made a distinct professional category.<sup>66</sup> In this category, cause lawyers are a distinct object of study characterised by ethicopolitical commitments through their work – in other words ‘do-gooding’ or working for the social good. A strong regard for the micro working environment therefore drives legal aid lawyers’ self-esteem and working ethic. Katz describes this process as ‘adopting reasonableness’.<sup>67</sup> The organisational character of the work is therefore pivotal to the practice as it allows for the transformation of negative elements of the work to be turned into positives: for example, transforming cold calculations of their work into emotional commitment and loyalty to the working philosophy of poverty lawyering. Lawyers in this in this sense often speak of legal aid work as a ‘home’, or a ‘family with a heart’.<sup>68</sup>

The glue holding together the public side of the profession is the drive for social change, which mirrors the findings of this research outlined below.<sup>69</sup> Taking part in community resistance and avoiding the ‘magnetisation of capital neoliberalism’ can encourage transformative change. Legal aid lawyering in some areas is inspired by grassroots activism, and two key motivating driving forces within that are *altruism* and *activism*.<sup>70</sup> As Forbess notes: ‘workers can be absolutely instrumental in operations to turn the tables on austerity’.<sup>71</sup> Those within the legal aid world have to uphold and create change from

<sup>62</sup>One year on from the first Covid lockdown, the backlog in Magistrates Courts’ stood at 476,932 outstanding cases, and in Crown Courts at 56,875: ‘HMCTS weekly management information during coronavirus – March 2020 to May 2021’, 10 June 2021, available at <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-may-2021>.

<sup>63</sup>Law Society ‘Civil legal aid: a review of its sustainability and the challenges to its viability’ (27 September 2021), available at <https://www.lawsociety.org.uk/topics/research/civil-sustainability-review>.

<sup>64</sup>J Katz *Poor People’s Lawyers in Transition* (New Brunswick, NJ: Rutgers University Press, 1982).

<sup>65</sup>*Ibid*, p 17.

<sup>66</sup>C Boukalas ‘Politics as legal action/lawyers as political actors: towards a reconceptualisation of cause lawyering’ (2013) 22(3) *Social and Legal Studies* 395. See also A Sarat and SA Scheingold ‘The dynamics of cause-lawyering-constraints and opportunities’ in A Sarat and SA Scheingold (eds) *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (Stanford, CA: Stanford University Press, 2005) p 1; N Morag-Levine ‘Partners no more: relational transformation and the turn to litigation in two conservationist organizations’ (2003) 37(2) *Law and Society Review* 457; R Abel ‘Speaking law to power: occasions for cause lawyering’ in S Sarat and SA Scheingold (eds) *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford: Oxford University Press, 1998) p 69; R Michalowski ‘All or nothing: an inquiry into the (im)possibility of cause lawyering under Cuban socialism’ in *ibid*, p 523.

<sup>67</sup>Katz, above n 51, p 56.

<sup>68</sup>*Ibid*, p 64.

<sup>69</sup>R Mittal *Legal Aid: Catalyst for Social Change* (Delhi: Legal Aid Society, 2012).

<sup>70</sup>J Shah ‘Community lawyering in resistance to neoliberalism’ (2021) 120(6) *Michigan Law Review* 1061.

<sup>71</sup>A Forbess ‘Redistribution dilemmas and ethical commitments: advisers in austerity Britain’s local welfare state’ (2022) 87(1) *Ethnos* 52.



the ground up, in light of being constantly trodden on by austerity, misconceptions and toxic narratives from the macro level. The significance of upholding a strong working culture and ethic has likewise been identified in the UK context in an earlier article.<sup>72</sup>

This paper has drawn on notions of professions to outline why they no longer apply in their traditional form to legal aid lawyers. Wilson and Hollis-Brusky explored the idea of ‘law as a calling’ in the Christian context.<sup>73</sup> Arguing that law in this context has been actualised in distinct ways, they argue that practising law as a ‘calling’ allows for lawyers to ‘turn inward’ and unite together, but also to ‘turn outward’ to maintain social justice, which is a key motivator as remuneration for their work.<sup>74</sup> Those within it do not just have the drive to work within the field despite its current challenges, but rather they feel they *ought* to do it.<sup>75</sup> As Newman found, a lot of lawyers are still proud of what they do and of their contributions to civic service, and remain driven at the coalface of the legal aid profession.<sup>76</sup>

### Entering the field

Truth emerges and is made visible from engagement with multiple realities in changing contexts.<sup>77</sup>

This paper draws on ethnographic and interview data, based within multiple courtrooms, a high street solicitors’ firm located on the outskirts of a small city, and a law centre with a range of participants.<sup>78</sup> Observations were carried out in two magistrates’ courts, one County Court, and three Crown Courts across five different locations within the city, and in other towns within the South East. I conducted the equivalent of 35 days of observation spread across the two magistrates’ courts and Crown Courts. I additionally spent one day a month throughout the entire year with the Duty Housing Solicitor in the County Court. The courtroom offers only a glimpse of what lawyers do, so observation in other locations was key. This allowed for variations to be highlighted within their working world. Capturing different locations likewise accommodated the diversity of the field. Whilst observations outside of the court environment were limited to only two locations, this paved way for more in-depth immersion into the field, given that I got to know the environments very well. I also struggled to find firms and law centres who would allow for prolonged observation due to the pressure on the field, so I was very grateful to be granted this entry. As the legal aid world is also very insular, I felt that getting a glimpse into a variety of working locations within the field was vital. In this sense, I prioritised quality over quantity, which means that my sample is by no means fully representative, but what it does do is provide crucial and rich insight into an often hard-to-reach and turbulent field.

I carried out 30 semi-structured interviews with various practitioners spanning criminal, civil, barrister-solicitor remits in 2017.<sup>79</sup> I entered the field on three consecutive days per week consistently across a period of just over a year, during which time I read and observed many cases. The firm’s funding model consisted of fixed and conditional fee arrangements, and public and private funding. The barristers based in chambers likewise carried out a mixture of publicly and privately funded work. The law centre was funded entirely by legal aid, charitable and pro bono services.

<sup>72</sup>Saks and Adams, above n 38.

<sup>73</sup>JC Wilson and A Hollis-Brusky ‘Lawyers for god and neighbor: the emergence of law as calling as mobilizing frame for christian lawyers’ (2014) 39(2) *Law & Social Inquiry* 416.

<sup>74</sup>See Saks and Adams, above n 38.

<sup>75</sup>D Koltonski ‘Vocations, exploitation, and professions in a market economy’ (2018) 44(3) *Social Theory and Practice* 323.

<sup>76</sup>Newman, above n 27.

<sup>77</sup>NK Denzin and YS Lincoln *The SAGE Handbook of Qualitative Research* (London: SAGE, 2011) p 48.

<sup>78</sup>16 out of the 30 participants were female; 14 out of the 30 participants were male; 26 of the 30 participants were white; 28 of the 30 participants identified as middle class. This research was carried out specifically in the context of England and Wales, but as reflected in the work of Abel et al, above n 8, the legal field is becoming more and more fragmented across global boundaries.

<sup>79</sup>This research was carried out prior to the Covid-19 pandemic, but it is clear that the pandemic has since caused further disruption. I am currently working on a BA-funded project to explore this with Dr Daniel Newman and Dr Jess Mant.

Snowball sampling was used due to the exclusive nature of legal aid work, and the decreasing numbers of legal aid practitioners. Therefore, whilst I was at greater risk of experiencing sample bias, given that my sample was built from recommendations from each lawyer – and therefore units for inclusion were not necessarily taken into account – this was my only viable choice. The sample in this study was likewise limited to the south east of England; however, this geographical limitation was mitigated by the fact that a wide range of specialisms and occupations within the remit of legal aid were included. I also spent extensive amounts of time sitting in on client meetings whose aim was to obtain legal aid funding. That, combined with my own research on the Legal Aid Agency and its protocol of means testing, meant that I gained a strong understanding of proceedings.

Full ethical clearance was obtained from the research ethics and governance committee at the University of Kent. Data analysis commenced over two stages in a deductive manner. Qualitative research remains an inherently unpredictable and complex process of interpretive practices.<sup>80</sup> This research employs an interpretivist standpoint, drawing on structural components to provide a well-rounded insight, further taking note of both the formalities and informalities of the professional context.<sup>81</sup> While these findings are not generalisable across the country, this research is indicative rather than representative.

Capturing this occupational world is a daunting task, given time constraints, ongoing pressures, and ever-changing procedures and regulations, but these findings make an original contribution to knowledge by offering an accurate picture of what working as a legal aid lawyer *actually* looks like.

### ‘Fat-cat’ versus ‘church mice’ reality

I’m not sure my private counterpart would even throw change at me outside Starbucks.  
(Solicitor J)

Drawing briefly on examples from the legal aid lawyers participating in this research, Barrister R recalls a legal aid case whereby there was an issue with the charge. The case equated to 10 hours of work plus additional hours travelling and waiting in court. Barrister R received a total of £126, meaning that they were paid a total of £7.89 per hour, which is £1.61 under the national living wage at the time. Yet, if Barrister R had not been there, the defendant would have received a much longer sentence. Solicitor S, based at a firm specialising in civil legal aid was paid £208 for an industrial injury case, even though they carried out £2,800 worth of work: 30% of the work Solicitor S does is free as it is pro bono. Solicitor A is the only remaining housing legal aid lawyer in Norfolk.<sup>82</sup> Legal aid lawyers are almost set up to fail by the current financial situation in which they work, and therefore the profession almost appears unsustainable.<sup>83</sup>

A central aim of this research was to understand the extent to which legal aid lawyers are aware of the way they are sometimes stereotyped by the media, the politicians, and the public as ‘fat cats’, in spite of the precarious financial situation outlined above. A key finding in response to research question (1) was the confirmation and awareness of stereotyping amongst the participants. Participants demonstrated that they felt doubly discriminated against, as they were simultaneously struggling in a financially austere work environment, as well as experiencing a lack of understanding or empathy from both public and professional perspectives. In general, they felt that the proliferation of this stereotype had contributed to an erosion of legal aid services and, ultimately, a diminishing of justice to many members of society.

<sup>80</sup>NK Denzin and YS Lincoln (eds) *The SAGE Handbook of Qualitative Research* (Sage, 5th edn, 2017).

<sup>81</sup>S Henry *Private Justice* (London: Routledge and Kegan Paul, 1983).

<sup>82</sup>This data is taken from my own research, outlined here in the methodology.

<sup>83</sup>See Thornton, above n 25; The Secret Barrister *Stories of the Law and How Its Broken* (Basingstoke: Pan Macmillan, 2018); J Mant and J Wallbank ‘The post-LASPO landscape: challenges for family law’ (2017) 39(2) *Journal of Social Welfare and Family Law* 149; The Law Society ‘A decade of cuts: legal aid in tatters’ (31 March 2023), available at <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/a-decade-of-cuts-legal-aid-in-tatters>.

Traditionally, the wider lawyering profession has always been viewed as having high-social standing, as noted above. As Miller recognised, this cultural production is very much ‘... the composite of the “ideas, attitudes, values, and opinions” about law held by people in society’.<sup>84</sup> Solicitor T expressed the notion that all lawyers, regardless of occupational or social status, are ‘placed under one bracket’ with little differentiation recognised between lifestyle and earning capacities. He also referred to the ‘constructed public image’, which features the gowned lawyer situated in the courtroom setting. He further argues that this image has become ‘normalised’ because of popular culture such as television programmes, series, and films, through the likes of programmes such as *Judge Judy*, and *Judge John Deed*.<sup>85</sup>

Solicitor L notes: ‘I think in the public’s eye, you are just a lawyer, as unless you go through the system yourself, the image often constructed is largely abstract and is often very far from reality’. She continued: ‘... very few of us actually devote any time to thinking about the justice system unless we find ourselves within it’. Often, contemplations on the public image of law end at adversarialism or commercial law. Thus, the popular image mainly features the courtroom, or a ‘fancy high-rise office building’ as people do not often understand the diversities of the legal workplace: this was reiterated by participants. Solicitor S considered this a ‘misconception’, noting that many clients think that all lawyers do the same work day in day out, despite their position as either a public or private legal practitioner, a solicitor or a barrister.

Typically, lawyers are often seen as ‘money-grabbing’ or ‘fat-cats’; Solicitors R and S both used these terms within their responses. As noted above, headlines in tabloid newspapers regularly wield such terms:

The worst stereotype from the media is that we are all just ‘lawyers’ and that lawyers are after money, so it does not matter if you are a legal aid lawyer or not. We’re immediately seen to be paid a lot of money, and that’s a perception that’s very difficult to challenge, unfortunately. (Solicitor V)

It is apparent that there seems to be a general lack of understanding from the public about how money flows through the legal system. Solicitor R addressed media misconceptions related to monetary gain:

I think there’s a misunderstanding that legal aid is like spending actual public money, and we’re all just pocketing it, people don’t realise how little funding we get. We’re so careful with every penny, yet clients still assume that I’m a big fat-cat living in a mansion with futons and the lot ... solicitors from the other side in private practice can also be quite disdainful about it as well, so there’s judgement from both ways really.

Solicitor J offered further reflection on this, stating that on the one hand the general public judge lawyers who specifically help ‘criminals’ as undeserving, but also stressed the lack of respect from lawyers in the commercial sector who view their public counterparts as ‘second-tier lawyers’ as a result of working with the undeserving in society. As noted by Dehaghani and Newman, legally aided criminal defence lawyers clients make up ‘... an underclass distinct from the good, law-abiding citizens of the general population’ who are often viewed as a burden on the state.<sup>86</sup> A further example of this was outlined by Solicitor A: ‘for many, having a legal aid lawyer assumes guilt’. Working with the ‘undeserving’ also brings to light unwanted attention and an increased level of stigmatisation. As

<sup>84</sup>CL Miller “‘What a waste. Beautiful, sexy gal. Hell of a lawyer.’ Film and the female attorney’ (1994) 4(1) *Columbia Journal of Gender and the Law* 203.

<sup>85</sup>*Judge Judy* was an American reality show about a female judge who tackled real-life small claims (1996–2021) (IMDb, 2018); *Judge John Deed* is a British television drama about a radical High Court judge who seeks ‘real justice’ in the cases before him (IMDb, 2018).

<sup>86</sup>R Dehaghani and D Newman ‘The crisis in legally aided criminal defence in Wales: bringing Wales into discussions of England and Wales’ (2021) 41 *Legal Studies* 234.

Solicitor J states, ‘You’ve got to love the clients ... because nobody else does. People always just make comments like why are you doing all that work for poor people when they don’t even contribute to society?’ The theme of discouraging unnecessary litigation at public expense has always been the central anxiety surrounding legal aid provision and its implementation, and has been a key target of austerity policies, as noted above.

Lack of access to early legal advice is preventing clients from accessing justice. Across the family, criminal and housing sectors there remains a significant imbalance between need and supply and the realities of this have meant that the public legal system is in crisis. ‘If nothing is done, then we won’t be able to speak of a criminal justice system in five years’ time’ (Barrister P). Solicitor A further emphasised her worries of victims, defendants and witnesses waiting years for justice. Solicitor J and Solicitor M also raised their concerns about the unjust nature of the legal system, which disproportionately affects both the clients and lawyers working within it. Clients are often put off by such onerous and heavily restricted legal processes. Accessing justice in this sense is surrounded by barriers that clients must overcome; participants stressed that, in lots of cases, this kind of rhetoric means many problems go unresolved.

Over half the respondents in this sample raised concerns over the lack of duty solicitors available due to ageing demographics, lack of pay, increased workloads, as well as damaged reputations. As external pressures build, many practitioners are turning away legal aid work altogether, and the lack of legal aid lawyers practising in some areas has resulted in ‘advice deserts’: over 15 million people in the UK are living in areas where there is little or no local representation.<sup>87</sup> As many of the participants in this research noted, funding is the single biggest challenge facing our legal system. Solicitor Y spoke about the need to treat legal aid work in the same way as healthcare: ‘If we want a robust system that does the job it should do, then just as the NHS is funded to help everyone regardless of postcode, status or earnings, we need money injected into the legal aid system.’ The ‘fat-cat’ myth has tarnished the profession, and as Barrister A notes, ‘we need to start shouting about it, as for far too long we have resigned ourselves to these false beliefs that society upholds ... it’s time to truly educate the public about the work we do day in day out’. In similar vein to the NHS and the pressures the healthcare system is facing, legal aid warrants the same attention from the media and the public alike (Solicitor K).

### **‘Working as a legal aid lawyer is an absolute privilege’**

This raises the question of why individuals continue to work within the field on a day-to-day basis. Turning to research question (2), it is interesting to try to understand what might motivate people to join or remain in legal aid work, given the increasingly difficult circumstances.

At the end of the day, we’re just there to help the clients, and therefore despite the lack of our own personal monetary benefit, and in some cases, not even being able to afford putting food on our own tables, we still do whatever we can to make sure we get a good outcome for *them*. (Solicitor B)

As a result of the growing impact of economic austerity, building a career in legal aid has become increasingly difficult. Making a living from an occupation offering little financial reward presumably thus presents other incentives that attract people to the field. Most participants spoke of a long-standing attraction towards a legal aid career, largely driven by social concerns.<sup>88</sup> Typically, in the context of choosing to enter a profession, financial incentives serve as a primary rationale, with professions invariably commanding higher salaries – for example, accountants, private lawyers, and medical professionals. However, as Barrister P in his mid-30s recognises, monetary gain was only

<sup>87</sup>‘Identifying legal aid deserts’ (LexisNexis, 2021), available at <https://www.lexisnexis.co.uk/insights/the-lexisnexis-legal-aid-deserts-report/index.html#group-section-Methodology-LBdWRNAE5P>.

<sup>88</sup>See NG Fielding ‘Judges and their work’ (2011) 20(1) Social and Legal Studies 97.

ever a motivating factor for those who had been in the lawyering profession for some time: ‘... maybe there’s an older generation who would get massive briefs in back in the hay day’. He added, ‘you know, one old guy said to me, “when I came to the bar, I didn’t know anyone who didn’t have a house in France”, but that is *completely* different to my generation as the pay just doesn’t allow that anymore’.

Remuneration rates ultimately affect the service that defendants receive, as the lawyer becomes torn between acting efficiently and providing a good level of service.<sup>89</sup> Legal aid practitioners are increasingly split between business needs and client needs, and this has challenged their occupational identities. Morale is low amongst both workers and clients, and the stress of finances combined with frustrating work methods has meant that legal practice has changed.<sup>90</sup> Funding cuts have made the work more and more unpleasant, undermining the very ability of the lawyer to advocate for their clients (Barrister R). Resilience is at an all-time low.<sup>91</sup> This was a consistent story reported by and observed amongst respondents.

Solicitor J refers to herself as a ‘fire-fighter’, as she feels that she is often the only one ‘standing between the person and actual disaster’. Partner K refers to her role in a ‘giving occupation’ and said that ‘... in her world, success isn’t determined through monetary gain, or corporate schmoozing, rather it is through the social good that we come to have *real* existence’. Solicitor E stressed that ‘it’s the human connect that keeps legal aid work alive’. Insight may be gained from questioning the structural (in)security of the legal aid lawyer actively opting to work in a more altruistic as opposed to acquisitive sphere. The potential benefits of practising legal aid can supposedly prevail over this sense of structural insecurity, with many participants stating an enduring motivation to stay in the role and a professed comfort with doing so.

### A profession in decline?

To this end, progressive/public lawyers have been aggressively deprofessionalised, resulting in significant liminality with regard to their capacity, independency, and ability to secure justice. Alongside this, a consistent narrative here is the discourse of vilification that lawyers practising in the public sphere receive – that being the sustained assault on the field by politics and the media alike. Negotiating the radical impact of the erosion of legal aid funding has produced structural reform; moreover, rising state intervention has fundamentally altered the professional identity of legal aid work, as observed. In line with research question (3), understanding the impact of declining support and difficult working conditions remains vital. The work is becoming increasingly detached from its original concept, as it increasingly denies the rights of workers within it to serve justice and help people – the very driving force holding the occupation together.<sup>92</sup> A by-product of neoliberal professionalisation practices is a progression towards professional decline. Whilst legal aid lawyers have always been viewed in a typically subordinate light, a growing antipathy towards the adversarial role of lawyers increases as legal aid lawyers fail to be champions of justice, in light of their reduced scope to be such.<sup>93</sup> Kronman and Simon identify this crisis in professional work as contributing to the key failings of legal professionalism.<sup>94</sup>

Barrister A notes that because of managerialism implemented by the Legal Aid Agency and other regulatory boards, his professional status has been weakened by the stringent nature of the work, continuously confining legal practice. The lawyer’s power is further constrained as the Legal Aid Agency

<sup>89</sup>L Welsh ‘The effects of changes to legal aid on lawyers’ professional identity and behaviour in summary criminal cases: a case study’ (2017) 44(4) *Journal of Law and Society* 559.

<sup>90</sup>See Thornton, above n 25.

<sup>91</sup>R Dehaghani and D Newman ‘Criminal legal aid and access to justice: an empirical account of a reduction in resilience’ (2022) 29(1) *International Journal of the Legal Profession* 33.

<sup>92</sup>D Newman and L Welsh ‘The practices of modern criminal defence lawyers: alienation and its implications for access to justice’ (2019) 48(1) *Common Law World Review* 64.

<sup>93</sup>E Cape ‘The rise (and fall?) of a criminal defence profession’ (2004) *Criminal Law Review* 401.

<sup>94</sup>A Kronman *The Lost Lawyer* (Cambridge, MA: Belknap Press, 1993); WH Simon *The Practice of Justice* (Harvard: Harvard University Press, 1998).

now determines *what is knowledge*, and therefore, their working practices are both dictated and constrained by strict processes. For example, Solicitor J spoke of how she now feels she is just ‘churning out’ cases as quickly as possible, without fully utilising the extent of her skill set:

The pressure on us being efficient and keeping up with the rules and regulations has become so overpowering, that I often wonder why I am still sat here. I came to the job to use my skills, I suppose to give something back, in a kind of philanthropic way, but now it seems I am just feeding into a bureaucratic cycle which gives me no time to actually individually and compassionately deal with those who need it, the most vulnerable people in society.

Considering the precarious nature of the work as a result of legal aid cuts, one could argue that the professional nature of the work is becoming subject to the type of degradation traditionally associated with blue-collar work.<sup>95</sup> This is evident in the combination of low salaries, low social status, disregard for professional skillsets, and poor working conditions – including long and unpaid working hours, as highlighted by Solicitors J and A. The relationship between precarity and social class here is important, as 28 out of the 30 interview participants in this research identified as middle class. Typically, ‘precariousness’ has been seen as having much more of an impact on the working classes. However, the legal aid profession, which situates itself within the ‘solidly middle class’ wider lawyering backdrop, has become increasingly contingent and reliant on short-term working patterns and free labour.

Likewise, the automation of knowledge work has meant that highly skilled workers are less sought after, resulting in a category of workers known as the ‘middle precariat’.<sup>96</sup> This category refers to the ‘downwardly mobile middle class’ who now face very different working conditions because of the precarious terrains within which they work. Changes to the legal aid regime encourage – or in some cases, force – the enactment of acquisitive as opposed to altruistic modes of work, with the privatisation of public services and the removal of state welfare systems potentially contributing to this precariousness. This has implications for the demoralisation and professional diminishment of practice in addition to the legal aid lawyer’s individual professional identity, which in turn may drive people out of the field entirely. Lawyers are having to ‘sell their individual skill set to the market’ as identified by Solicitor R, resulting in a loss of professional independence and an inability to perform the work in the way that mirrors the motivations for wanting to work within the field. Academic literature has identified the legal aid field as becoming more ‘factory-like’.<sup>97</sup> Sommerlad notes how the marketisation of legal aid has altered the status of legal practitioners.<sup>98</sup> This results in a significant gap between the aspirations and realities of practice as expressed continuously by participants. Legal aid lawyers are subjected to a limited professional role, in the sense that their capabilities, significance and overall career progression is significantly restricted. As Sommerlad notes, this has resulted in the existence of the ‘legal precariat’.<sup>99</sup>

Standardisation may be happening across the broader legal field, as autonomy is being more and more squeezed in the public and private worlds alike, but public work should be viewed as a professional project in its own right, given that the very heart of it – social justice – is becoming increasingly harder and harder to achieve, restricting its practice.

### Restricted progression

One consequence of the decline of support for legal aid which has emerged from the research is lack of professional progression. Legal aid lawyers undoubtedly face marginalisation within society, but they

<sup>95</sup>G Standing *The Precariat: The New Dangerous Class* (London: Bloomsbury, 2011).

<sup>96</sup>A Quart *Squeezed: Why Our Families Can't Afford America* (Harper Academic, 2018).

<sup>97</sup>M McConville et al *Standing Accused: The Organization and Practices of Criminal Defence Lawyers in Britain* (Oxford: Clarendon Press, 1994); Newman, above n 27.

<sup>98</sup>H Sommerlad ‘Reflections on the reconfiguration of access to justice’ (2008) 15(3) *International Journal of the Legal Profession* 179.

<sup>99</sup>See Sommerlad, above n 18.



also face it within their education and training. The highlighting of issues such as (in)adequate training and preparation for working with clients demonstrated that the participants were alert to potential failings beyond their control early on in their careers. This indicates that legal aid lawyers' personal investment may not be matched by professional or institutional provision. Solicitor S spoke about the lack of focus on legal aid in their legal training: it had only really been mentioned in an optional module on access to justice. Otherwise, the term 'legal aid' was barely mentioned. Barrister A likewise emphasised the absence of legal aid-focused education and stressed that he only really had exposure to it because of work experience. Solicitor R also noted that legal aid modules seemed to be 'looked down upon' during their solicitor training, and the only option to study legal aid was within the crime module. Solicitor J said that her training was very much geared towards being a commercial lawyer, as that was where the money was. Solicitor T said that legal education is '... like a driving test, it only gives you very basic grounding and you can just about get by, but it doesn't mean you are perfectly able to drive'. Solicitor M noted a considerable gap between studying and practising in legal aid.

The legal aid lawyer's limited professional capacity has been further exacerbated because of the restricted opportunity to progress within the field, with participants continuing to face capped progression. As highlighted by Barrister A, once a person has obtained the status of being a legal aid practitioner, it is often hard to quickly progress from being 'junior counsel' to being a barrister who has obtained rank by becoming King's Counsel. This is the case unless practitioners are willing to perform significant risks, such as secondment, self-employment, or switching practice areas – away from legal aid-centered work. Assuming that specialisms are transferable can be problematic in the first place, as the work of the legal aid lawyer becomes increasingly generic and deskilled. As Solicitor J confirms, legal aid practice is very much a 'flat profession' given the limited opportunity to climb the ladder, which contrasts massively with private practice.

In similar vein, Barrister A states that legal aid work and progression do not go hand in hand. For instance, Solicitor J moved from working within a criminal firm to practising as a self-employed solicitor advocate. However, he noted that it took many years to be able to branch out on his own. 'Taking the leap was extremely stressful, you must believe in yourself and trust yourself. It's a bit of a balancing act really.' Solicitor J had only just branched out as a self-employed solicitor when he became involved in this research, but he said straightaway that he already felt more confident and excited about his practice. Delivering a service on his terms and being able to control his own work-life balance were both significant positives for him. Additionally, he felt like he had 'moved up in the legal world', gaining more autonomy and control over his own actions despite still dealing with legal aid cases. Similarly, Barrister R took secondment to another privately funded field, after feeling an inability to survive on the rates of pay for the public work he was doing:

Like a lot of other barristers, I felt like I was getting in a lot of debt because of the career I'd chosen ... then a six-month secondment (shift in area of practice) came along, and I felt like that got me out of the black hole I was in ...

Practising legal aid often leaves little time for focusing on career progression on managerial/partner routes unless you work at the same firm for a significant period, as indicated by Solicitor J. For instance, Solicitors R and M both hold positions as partners within their respective housing and civil liberties departments. Both are in their early forties and have been in their firms for more than 10 years. Understanding what it means to 'progress' within their world is important to keep the profession alive. As Barrister R recognises:

There isn't a progression in terms of formal hierarchy, I can't get promoted but there is progressing in terms of the types of cases, i.e. gone from being mostly in magistrates to mostly doing warrants to fully trials in a county court ... now full trials in front of judges ... then in a year or so I'll be a lot more in the High Court ... but it is a lot to take on and it can be very overwhelming so I like to take things slow ...

Here we can recognise that while Barrister R desires to progress and is aware of the stages of career progression within his specialism, he is also cautious, taking his role slowly to ensure that he does not become too overwhelmed. This tactic is not unique. Solicitor M spoke of taking her role each day as it comes:

... going into legal aid work now is career suicide ... but I just don't want to compromise and move over to the corporate side. I'm just taking things slowly and seeing how things go on a day-to-day basis ... as opposed to looking at long-term progression.

She stated that due to external constraints such as the funding protocol implemented by the Legal Aid Agency, combined with system deficiencies – alongside the professional uncertainties resulting from legal aid cuts – often there exists very little time to think about your own progress. Instead 'you are always thinking about getting the client into a more comfortable position, rather than thinking of yourself. Moreover, 'this can really have an impact on your motivation to want to progress'. Solicitor T builds on the notion that due to cuts in funding, there are now fewer support staff helping with administrative duties, and therefore more and more time is taken up performing menial tasks such as paperwork, leaving little time for self-development.

Yet, Solicitor M did not want to move to the corporate side, which is very interesting. Even with capped career progression within legal aid work, 25 of the participants openly said that they would not want to move over to the private side of legal practice. There were several reasons for this, such as a lack of professional respect, disillusion, low societal impact, as well as professional scrutiny. Solicitor M stressed that she did not want to join the corporate world as she did not agree with the principles, values and lack of inclusivity that private work encouraged. Success in the legal aid context is not measured in a monetary sense, but rather by societal impact, as confirmed by Solicitor M: 'At the end of the day, if you choose to work in legal aid, then your career progression is just about helping as many clients as you can in the best way possible'. Legal aid can be identified therefore as a 'flat profession', and both solicitors and barristers suffer intrinsically from limited opportunities for progression, whereas in the private sector, speedy progression and associated reward remain both encouraged and integral.

### Jumping on the legal aid train

Consistent with other research, several participants in this study were disillusioned with their careers in legal aid.<sup>100</sup> This sense of disenchantment crosses over specialisms and manifested in unusual ways.

It is important to encourage legal aid work as a journey rather than a destination. (Solicitor J)

Lack of career progression can and may persuade those thinking of entering the legal profession to reconsider. Combined with the high levels of stress, lack of support, and the juggling of mountains of legal aid cases, this affects retention levels within the profession, as cited in research conducted by Young Legal Aid Lawyers.<sup>101</sup> Krieger and Sheldon's study also noted that the lack of autonomy and professional respect makes lawyers unhappy.<sup>102</sup> However, keeping the profession alive proves to be a challenge. As Thornton notes, the 'evaporation of goodwill' indicates that the future of the service cannot be guaranteed.<sup>103</sup>

<sup>100</sup>A Boon 'From public service to service industry: the impact of socialisation and work on the motivation and values of lawyers' (2005) 12(2) *International Journal of the Legal Profession* 229.

<sup>101</sup>Young Legal Aid Lawyers 'Social mobility in a time of austerity' (March 2018), available at <https://www.younglegalaidlawyers.org/sites/default/files/Soc%20Mob%20Report%20-%20edited.pdf>.

<sup>102</sup>L Krieger and K Sheldon 'What makes lawyers happy: a data-driven prescription to redefine professional success' (2015) 83 *George Washington Law Review* 554.

<sup>103</sup>Thornton, above n 25.

It's all very, very emotionally draining ... the clients, the Legal Aid Agency. I would only encourage a young person to do this if like nothing else would do and that is what they wanted to devote their life to. (Solicitor S)

In this research, those practising within legal aid did not deny that undertaking the work was an extremely demanding experience, both physically and emotionally. As Solicitor J notes:

I wouldn't encourage anyone to enter the profession now ... there is no personal support, no money, and loads of stress. It's all become too overwhelmingly hard to manage.

Solicitor E openly stated that she would not encourage anyone to enter the profession, as 'you don't get any thanks' from anyone, including those you seek to serve, the public or the media. Solicitor B would not encourage those to enter the field of legal aid due to the sheer cost of obtaining the necessary qualifications and the inability to regain the money due to low salaries. However, as Solicitor J argues:

Do work in legal aid, but just modify your expectations ... ultimately you can get a lot of job satisfaction so it can be a somewhat nice way of earning a living. You can go into court and have a bit of banter and all that ... it can be quite social.

He further emphasised the need for 'active legal aid ambassadors', returning to places where they studied and talking to prospective students and explaining the realities, as ultimately it was down to the new recruits to 'keep the profession alive' as it is such a hidden occupation. This notion of passing down and sharing insight within the legal profession forms the basis of knowledge.<sup>104</sup> Solicitor J went on to state that the passion was to 'share not curb the experience'. Whilst there were mixed reactions from the research participants as to whether they might encourage legal aid work, 28 out of the 30 participants fundamentally confirmed their career trajectories to be very much tied to working within legal aid due to their social commitment to the role. The *distinctive* vocational aspect of the work is the glue that holds an otherwise broken profession together, as evidenced throughout this research.

As Whittington and Boore comment, invariably some professions are viewed as vocations as opposed to jobs, and therefore uphold principles and values in line with their outlined professional standards.<sup>105</sup> Solicitor K confirms this: 'To be a legal aid lawyer requires you to enter the world as your vocation, as opposed to your occupation. Your heart must be in it, it should be what you are inclined to do, as opposed to what you are forced to do.' As confirmed by a number of participants, being a legal aid lawyer is a vocation, and you have to *really* want to do it. A devotion to serving in the public interest, and forefronting client-centred practice are two key attributes which continue to define legal aid work. This paper finds that the work of a legal aid lawyer fits more into the category of being a vocation rather than a profession in its traditional form.

## Conclusion

Limitations must be acknowledged when addressing overall findings of a qualitative study, given that these findings are neither generalisable nor without their flaws. Reporting and interpreting interview and observational data does not come without its risks; however, this research is largely consistent with its field as evidenced here. Reflexivity is likewise apparent in the participants' responses, which mitigates concerns about inaccurately positive reporting.<sup>106</sup> Moving forward, more research needs to be

<sup>104</sup>See Cooke, above n 14.

<sup>105</sup>D Whittington and J Boore 'Competence in nursing. Professional competence and quality assurance in the caring professions' in R Ellis (ed) *Professional Competence and Quality Assurance in the Caring Professions* (London: Groom Helm, 1988) p 9.

<sup>106</sup>See Thornton, above n 25.

conducted – particularly spanning broader geographical areas, as well as international contexts. Likewise, more academic enquiry needs to be carried out, spanning both legal aid and private fields simultaneously to deepen this research, as this research was public-practitioner heavy. To this end, this paper critically calls for the lawyering profession – which is often viewed as unabridged – to be reframed into two distinct occupational categories: public practice (legal aid) and private practice. Findings indicate that the cumulative impact of austerity and misjudgements makes legal aid work much harder to navigate than its private counterpart. Legal aid lawyers are subjected to a limited professional role, in the sense that their capabilities, significance and overall career progression is significantly restricted, as outlined above. As legal aid work becomes increasingly hollowed out, legal aid lawyers face a more demarcated, restricted, and deprofessionalised working environment. Larger chunks of society are facing injustice as resource becomes increasingly compressed. Consequences that reductions in funding and services dictate on the ‘lived professional experiences’ results in the legal aid lawyer being placed in the position of a precarious professional or ‘legal precariat’.<sup>107</sup> Political and structural underpinnings likewise make it difficult to navigate from a professional perspective, combined with the increased erosion of professional privilege as budgets become more constrained. Legal aid lawyers undoubtedly face altered professional identities. The gap between aspirations and realities of practice has increased as educational, structural, and societal support shrinks.

Yet, the practical craft of legal aid work continues to attempt to resist barriers in legislation and policy because of altruistic motivations and strong internal working cultures.<sup>108</sup> Legal aid work in its current form should no longer be viewed through the lens of being a traditional ‘profession’, but rather more a vocation. A truer reflection of reality is revealed if legal aid work is viewed through the vocational lens, given that the key form of remuneration is altruistic as opposed to financial, as this research has made clear. Viewing legal aid work through a *vocational* as opposed to a *professional lens* offers a more accurate conceptualisation in this case. This resonates with Heyes conceptualisation of a ‘vocation’:

... that (a) that person is particularly devoted, going ‘beyond the call of duty’ in doing their job, and (b) they do the job because they like doing it or feel they need to do it (they ‘care’).<sup>109</sup>

Whilst ‘fat-cat’ narratives continue to conceal the ‘church mice’ reality, there has recently been a slight shift in sentiment because of public legal challenges, such as Grenfell, Covid-19 and barrister strike action. Yet a change in public perception is urgently needed given the remaining gap between the perception and reality of legal aid work, as well as its broader decomposition. This is also necessary for the future health of the profession as a whole.<sup>110</sup>

The value of this research is not only clear in the field of law but has strong applicability to wider occupational and political domains. Providing insight into what it means to be a liberal professional in the twenty-first century will prove valuable in the study of other pressurised and multi-faceted professions and will likewise contribute to the study of work going forward. This remains a key future avenue for research, as parallels can be drawn in dentistry, medicine, and education – just to name a few – where public/private distinctions exist.

<sup>107</sup>See Sommerlad, above n 18.

<sup>108</sup>See Cooke, above n 14.

<sup>109</sup>A Heyes ‘The economics of vocation or “why is a badly paid nurse a good nurse?”’ (2005) 24(1) *Journal of Health Economics* 561.

<sup>110</sup>See also L Bleasdale and A Francis ‘Great expectations: millennial lawyers and the structure of contemporary legal practice’ (2020) 40 *Legal Studies* 376.