

# Assessment of compliance with the Code of Practice for Official Statistics

## Statistics on Legal Aid in England and Wales

*(published by the Ministry of Justice)*

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### **About the UK Statistics Authority**

The UK Statistics Authority is an independent body operating at arm's length from government as a non-ministerial department, directly accountable to Parliament. It was established on 1 April 2008 by the *Statistics and Registration Service Act 2007*.

The Authority's overall objective is to promote and safeguard the production and publication of official statistics that serve the public good. It is also required to promote and safeguard the quality and comprehensiveness of official statistics, and good practice in relation to official statistics.

The Statistics Authority has two main functions:

1. oversight of the Office for National Statistics (ONS) – the executive office of the Authority;
2. independent scrutiny (monitoring and assessment) of all official statistics produced in the UK.

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# **Assessment of compliance with the Code of Practice for Official Statistics**

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## NATIONAL STATISTICS STATUS

National Statistics status means that official statistics meet the highest standards of trustworthiness, quality and public value.



All official statistics should comply with all aspects of the *Code of Practice for Official Statistics*. They are awarded National Statistics status following an assessment by the Authority's regulatory arm. The Authority considers whether the statistics meet the highest standards of Code compliance, including the value they add to public decisions and debate.

It is a producer's responsibility to maintain compliance with the standards expected of National Statistics, and to improve its statistics on a continuous basis. If a producer becomes concerned about whether its statistics are still meeting the appropriate standards, it should discuss its concerns with the Authority promptly. National Statistics status can be removed at any point when the highest standards are not maintained, and reinstated when standards are restored.

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# 1 Summary of findings

## Introduction

- 1.1 This is one of a series of reports<sup>1</sup> prepared under the provisions of the *Statistics and Registration Service Act 2007*<sup>2</sup>. The Act allows an appropriate authority<sup>3</sup> to request an assessment of official statistics against the *Code of Practice for Official Statistics*<sup>4</sup> in order for them to gain National Statistics status. This report is in response to such a request. The report covers the set of statistics reported in *Legal Aid Statistics in England and Wales*<sup>5</sup> (*Legal Aid Statistics*) published by the Ministry of Justice (MOJ).
- 1.2 This report was prepared by the Authority's Assessment team, and approved by the Regulation Committee on behalf of the Board of the Statistics Authority, based on the advice of the Director General for Regulation.

## Decision concerning designation as National Statistics

- 1.3 The UK Statistics Authority judges that the statistics published in *Legal Aid Statistics* do not fully comply with the Code of Practice for Official Statistics in the ways summarised in paragraph 1.9. The Authority judges that the statistics published in *Legal Aid Statistics* cannot be designated as National Statistics until the Authority has confirmed that appropriate actions have been taken by MOJ to meet the Requirements listed in paragraph 1.9. MOJ is expected to report its completed actions to the Authority by November 2016.
- 1.4 MOJ has informed the Assessment team that it has started to implement the Requirements listed in paragraph 1.9. The Statistics Authority welcomes this.

## Summary of strengths and weaknesses

- 1.5 The statistics team has made *Legal Aid Statistics* more accessible by improving the layout of the statistical report, introducing the *Guide to Legal Aid Statistics in England and Wales*<sup>6</sup>, and including links to useful metadata. Users who responded as part of the assessment user engagement reported that the statistical report had much improved over the last two years and they welcomed the move from annual to quarterly reporting from December 2014. The statistics team has responded to the challenges posed during the Assessment by completing work to meet some potential Requirements. The team has also made good progress in reviewing the administrative data used to produce the statistics, using the Authority's Administrative Data Quality Assurance Toolkit<sup>7</sup>.

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<sup>1</sup> <https://www.statisticsauthority.gov.uk/publications-list/?keyword=&type=assessment-report>

<sup>2</sup> [http://www.opsi.gov.uk/Acts/acts2007/pdf/ukpga\\_20070018\\_en.pdf](http://www.opsi.gov.uk/Acts/acts2007/pdf/ukpga_20070018_en.pdf)

<sup>3</sup> Subsection 12(7) of the Act defines 'appropriate authority' as Ministers of the Crown, Scottish Ministers, Welsh Ministers, Northern Ireland departments or the National Statistician

<sup>4</sup> <https://www.statisticsauthority.gov.uk/monitoring-and-assessment/code-of-practice/>

<sup>5</sup> <https://www.gov.uk/government/collections/legal-aid-statistics>

<sup>6</sup> <https://www.gov.uk/government/statistics/a-guide-to-legal-aid-statistics-in-england-and-wales>

<sup>7</sup> <http://www.statisticsauthority.gov.uk/assessment/monitoring/administrative-data-and-official-statistics/quality-assurance-toolkit.pdf>

- 1.6 There are examples in this report where users' needs to monitor the reforms in the provision of legal aid are not being met by the official statistics; for example, the current lack of official statistics on barrister fee income exclusive of VAT and costs, and the lack of caseload and expenditure statistics presented separately for England and for Wales. MOJ's previous engagement with users of the official statistics has also been passive, and based on engagement through its publications, incoming emails, periodic user consultations and referrals from colleagues within MOJ and LAA, though users who had contacted the statistics team directly were impressed by the helpfulness and professionalism of the statisticians.
- 1.7 The dearth of direct engagement with users outside of MOJ and LAA by the statisticians, combined with an inability to meet some users' needs, appears to have contributed to a perception by some users of a lack of statistical transparency and impartiality. The Assessment team found no evidence of partiality during the course of the Assessment, however, the perception of partiality by some users, represents a serious barrier to trustworthiness. This will only be resolved through more direct, proactive engagement by the statistics team with users of the statistics outside of MOJ and LAA.

### Detailed recommendations

- 1.8 The Assessment team identified some areas where it felt that MOJ should improve the production and presentation of *Legal Aid Statistics*. Those which are essential for MOJ to address in order to strengthen its compliance with the *Code* and to enable designation as National Statistics are listed – as Requirements – in section 1.9, alongside a short summary of the key findings that led to each Requirement being made.

### Requirements for designation as National Statistics

- 1.9 This section includes those improvements that MOJ is required to make in respect of its *Legal Aid Statistics* in order to fully comply with the *Code of Practice for Official Statistics*, and to enable designation as National Statistics. During the course of the Assessment we noted a perception by users of a lack of impartiality in the presentation of the statistics. This represents a serious barrier to trustworthiness and our Requirements point to crucial areas for addressing this perception.

| Finding   | Requirement |  |
|---|-------------|--|
| MOJ's direct engagement with users outside of MOJ and LAA is limited and it publishes little information about their needs or its plans for meeting them. There is also a perception by | 1           | Extend its user engagement activity and address users' perceptions of a lack of impartiality by: <ul style="list-style-type: none"> <li>a) Establishing effective methods of direct engagement with a wider range of relevant users and potential users</li> <li>b) Publishing a fuller account of the users and uses of the statistics and the types of decisions that they are used to inform</li> <li>c) Publishing information about users'</li> </ul> |

|  |                 |   |
|--|-----------------|---|
| <p>some users of partiality in the presentation of the statistics. MOJ should:</p>   |                 | <p>experiences of the statistical services, the impartiality of statistical reporting, data quality and the format and timing of reports, and</p> <p>d) Publishing a statistical plan outlining its approach to addressing its users' needs for additional analyses</p> <p>(para 3.9).</p>  |
| <p>MOJ needs to improve the range of analysis that it provides, and clearly set out in the statistical report the developments it has made in response to relevant FoI requests. There is also a perception by some users of partiality in the presentation of the statistics. MOJ should:</p> | <p><b>2</b></p> | <p>Improve the range of analyses that it includes in the official statistics and address users' perceptions about a lack of impartiality in the choice of analyses presented by:</p> <p>a) Ensuring that the range analyses presented meets the needs of a broader range users</p> <p>b) Presenting as much of the data collected from legal aid providers as possible in the official statistics, and where it has not, clearly set out its rationale for this decision, and</p> <p>c) Setting out in the statistical report the developments that it makes in response to FoI requests, and providing links to relevant published FoI analyses, to improve transparency and so that users do not have to make multiple requests for information</p> <p>As part of meeting this Requirement MOJ should review the additional variables that could possibly be used for analysis, and publish a summary of this information to better facilitate users' understanding of the potential analyses available, and to inform the future development of the statistics in relation to users' needs</p> <p>(para 3.16).</p> |
| <p>MOJ has not published sufficient information about the strengths and limitations of the statistics or its data quality assurance processes. MOJ should:</p>   | <p><b>3</b></p> | <p>Improve the standard of the quality information published alongside the official statistics by:</p> <p>a) Publishing information about the strengths and limitations of the statistics in relation to their existing and potential uses</p> <p>b) Publishing a detailed account of the data quality assurance processes used in the production of the statistics, including an account of the data quality checks that are carried out by the data suppliers and the statistics team, and details about any audits</p>   |

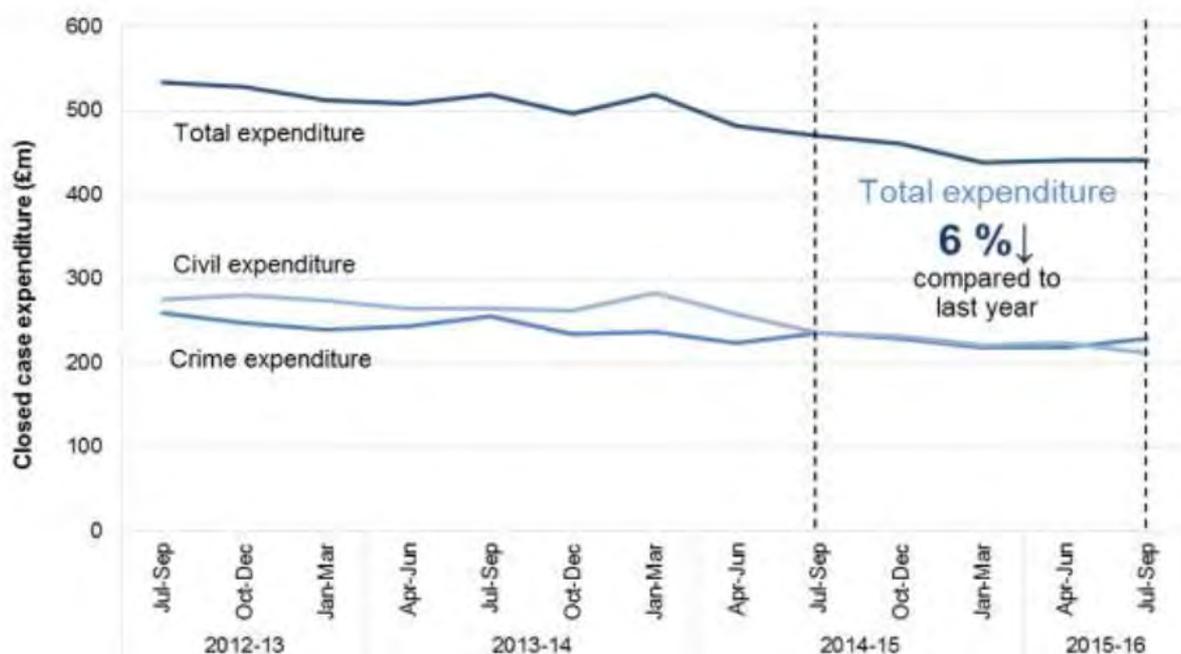
|  |  |  |
|--|--|--|
|  |  | <p>or third party assurance of the legal aid data</p> <p>c) Publishing information about the statistics teams' judgments in relation to any identified data quality issues, including IT systems changes, and their implications for the quality of the official statistics in terms of their existing and potential uses, and</p> <p>As part of meeting this Requirement, MOJ should refer to the Authority's <i>Administrative Data Quality Assurance Toolkit</i> (para 3.27).</p> |
|--|--|--|

## 2 Subject of the assessment and users' views

### Introduction

- 2.1 In 2014, the Authority received a number of representations about the nature, quality, timing and use of a MOJ ad hoc statistical release titled *Barrister fee income from public sources 2012/13*<sup>8</sup>, published on 2 January 2014. Following a published letter<sup>9</sup> from the Chair of the UK Statistics Authority to the Minister for the Courts and Legal Aid, dated 13 March 2014, the Parliamentary Under-Secretary of State for Justice requested an assessment of Statistics on Legal Aid on 17 November 2014.
- 2.2 The government funds legal aid<sup>10</sup> through the Legal Aid Agency (LAA)<sup>11</sup>, to help people who are unable to pay for these services. To provide transparency to the taxpayer, MOJ commenced publishing *Legal Aid Statistics*, using statistics compiled by statisticians in LAA, from the administrative information gathered as part of its financial functions. *Legal Aid Statistics* was first published as an annual report in September 2013, but has been published quarterly since December 2014. The statistics (see Figure 1) are used by the government to review the workload and spending on civil and criminal legal aid and to monitor the impact of the reforms to legal aid.

**Figure 1: Value of payments made for cases completed in July 2012 to September 2015, by legal aid scheme**



Source: *Legal Aid Statistics in England and Wales, July to September 2015*, Ministry of Justice

<sup>8</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-barrister-fee-income-from-public-sources-201213>

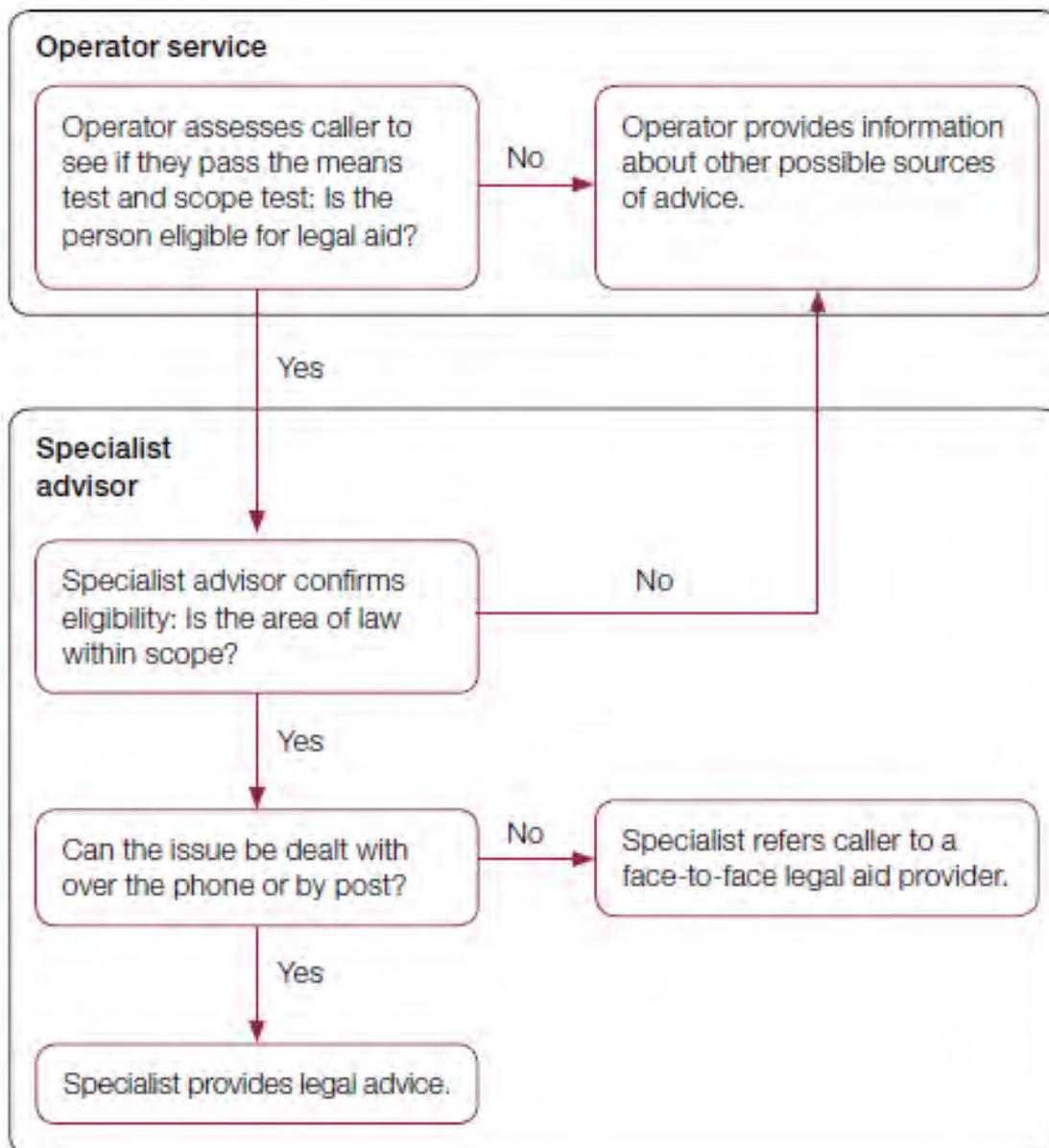
<sup>9</sup> <https://www.statisticsauthority.gov.uk/archive/reports---correspondence/correspondence/letter-from-sir-andrew-dilnot-to-shailesh-vara-mp-13032014.pdf>

<sup>10</sup> Legal aid can help meet the costs of legal advice, family mediation and representation in a court or tribunal

<sup>11</sup> <https://www.gov.uk/government/organisations/legal-aid-agency>

2.3 As part of the drive to reduce the cost of civil and criminal legal aid, the *Legal Aid Sentencing and Punishment of Offenders Act 2012*<sup>12</sup> (LASPO) came into effect on 1 April 2013, and LAA was created (from the Legal Services Commission) as an Executive Agency of MOJ. The function of LAA is to “ensure the delivery of legal aid efficiently and effectively as part of the justice system” throughout England and Wales.

**Figure 2: The civil legal aid telephone helpline process**



Source: *Implementing Reforms to civil legal aid*, National Audit Office

### Sources of the data

2.4 LAA provides legal aid in two ways – over a telephone helpline, which assesses eligibility and provides advice (see Figure 2), and by face-to-face conversations with legal professionals. Face-to-face legal aid is provided

<sup>12</sup> <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>

through a market of legal firms and third-sector organisations, which are managed and monitored by LAA. LAA provides funding for advice and representation in legal proceedings for those applicants who meet the eligibility criteria. These criteria include an assessment of: the applicant's means; the merits of the case and the scope of the case. Civil legal aid consists of 'legal help', where the lawyer provides advice and assistance, but does not represent the client in court and 'civil representation', where the lawyer also represents the client in court. Legal aid can cover the cost of legal advice for people accused of a crime, as well as those involved in civil law proceedings (see Figure 3).

**Figure 3: Legal Aid interactions with the Criminal Justice System**



Source: *Legal Aid Statistics in England and Wales, July to September 2015*, Ministry of Justice

## Governance arrangements

2.5 The statistics team in LAA that produces *Legal Aid Statistics* reports jointly to the head of the finance and digital directorate in LAA and the MOJ Head of Profession for Statistics. This directorate, amongst other things, administers payments of legal aid, assures the accuracy of payments and supports the requirements for financial and performance management of legal aid. Payments from LAA to providers are subject to VAT. All providers of civil legal representation are required to submit data electronically, using the Client and Cost Management System (CCMS).

## Users and uses

2.6 Officials in government use the statistics to:

- examine the uptake of legal aid
- help inform the development of policies and changes to regulations
- monitor the impact of legal aid reforms
- report on progress against key performance measures
- prepare for judicial reviews
- provide briefing for ministers, policy colleagues and the media
- prepare responses to requests for information

- support the quality assurance of management information
- 2.7 Academic researchers use the statistics to prepare lectures and for wider research. Legal journalists prepare discussion articles and summaries using the published statistics. Professional bodies use the statistics to:
- research the extent of access to legal aid
  - prepare training materials for their members
  - respond to public consultations
  - prepare campaigning materials
  - examine the effect of legal aid policies
  - prepare briefing for peers, ministers and the media
  - examine changes to the legal services market
  - devise survey questions
  - examine trends in legal aid caseload and payments
  - hold the government to account
  - benchmark the national picture against their own experience locally

### **Summary of users' views**

- 2.8 As part of this assessment, we asked for views about the statistics from a range of representatives from central government, academia, professional legal bodies, lobby groups and data suppliers, who were also data users. Their views have been presented throughout the report and have influenced the Requirements.
- 2.9 In summary, many users reported that not all of the information they sought was published within *Legal Aid Statistics*, and some users had requested additional analyses from MOJ to meet these needs. These users had found LAA statistics team to be very helpful and responsive in relation to the specific queries that they had raised, though some were unclear about the additional analyses or variables that might be available. Some notable gaps in the statistics raised by users included the lack of official statistics on barrister fee income exclusive of VAT and costs, and the lack of separate caseload and expenditure statistics for England and Wales. Some users told us that they would like the annual legal aid expenditure figures to be presented alongside the end of year financial accounts, in the statistical report published at the end of the financial year. Most users felt that the report was complex and difficult to understand for the less-expert user and others did not understand the reasons for small differences between one set of quarterly figures and those published subsequently. Several users noted that the standard of the report had improved considerably over the last two years.
- 2.10 Some users raised concerns with us that *Legal Aid Statistics* appeared to focus primarily on presenting a “positive news story” for MOJ and LAA; for example, by reporting on small increases in the number of mediation cases, and presenting the number of claims or applications approved, rather than presenting information on approval rates, or the numbers and proportions of

applications rejected. Users of the statistics who were also legal aid providers told us that they were required to submit information on travelling and waiting times to LAA, but that this information was not included in the official statistics.

### **Other research and statistics about legal aid**

- 2.11 On 20 November 2014, the National Audit Office (NAO) published a report titled *Implementing reforms to civil legal aid*<sup>13</sup>. Recommendations that gelled with improvements to the statistics are that “The Ministry should establish the extent to which those who are eligible for civil legal aid are able to access it and what obstacles, if any, exist” and “The Ministry should develop its understanding of the challenges facing civil legal aid providers and the provision of support across the country”.
- 2.12 Statistics on legal aid in Scotland are published by the Scottish Legal Aid Board<sup>14</sup>, an executive non-departmental public body of the Scottish Government, in its *Annual Report*<sup>15</sup>. Information about the provision of legal aid in Northern Ireland will be published by the Legal Services Agency Northern Ireland<sup>16</sup>, an Executive Agency of the Department of Justice, created on 01 April 2015.

### **Accessibility and costs**

- 2.13 The statistics team told us that the combined cost of producing and publishing the statistics for the financial year 2015 to 2016 was around £125,000.
- 2.14 MOJ publishes *Legal Aid Statistics* as a pdf, with supplementary tables published in excel and .csv formats. This equates to a level of three stars under the Five Star Scheme that forms part of the Open Standards Principles proposed in the *Open Data White Paper: Unleashing the Potential*<sup>17</sup> and adopted as UK government policy in November 2012<sup>18</sup>. Five stars represent the highest star rating within the Scheme.

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<sup>13</sup> <https://www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid/>

<sup>14</sup> <http://www.slab.org.uk/>

<sup>15</sup> [http://www.slab.org.uk/common/documents/Annual\\_report\\_2014\\_2015/Annual\\_Report\\_2014-15.pdf](http://www.slab.org.uk/common/documents/Annual_report_2014_2015/Annual_Report_2014-15.pdf)

<sup>16</sup> <https://www.dojni.gov.uk/sites/default/files/publications/doj/lsani-business-plan-15-16.pdf>

<sup>17</sup> [http://data.gov.uk/sites/default/files/Open\\_data\\_White\\_Paper.pdf](http://data.gov.uk/sites/default/files/Open_data_White_Paper.pdf)

<sup>18</sup> <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>

### 3 Assessment findings

#### User engagement and meeting users' needs

- 3.1 MOJ has published a *Customer Service and Engagement Statement*<sup>19</sup> which includes its user engagement strategy. The strategy states that MOJ will engage with its internal MOJ users through more direct contact, and that its main channel for engagement with external users is via its statistical pages on the gov.uk website. The strategy states that MOJ encourages users to provide feedback at any time, either through structured informal surveys or by email, and that it will explore the use of social media as alternative ways to communicate with users, raise awareness and improve access.
- 3.2 The statistics team carried out a consultation<sup>20</sup> in 2014/15 to obtain users' views on recent and proposed changes to the scope and presentation of the statistics at that time, and MOJ published a consultation response<sup>21</sup> in March 2015. The statistics team told us that it had introduced breakdowns for legal aid provider by geographic area, the number of sessions involved in mediations, and expanded the information included on providers, in direct response to user feedback from the consultation. The statistics team actively engages with internal MOJ and LAA users to ensure the appropriate use and interpretation of the statistics within the Department. Internal (MOJ and LAA) and external (provider, academic and professional body) users responding to the assessment user engagement reported that they found the statistics team to be very helpful and responsive in relation to the specific legal aid statistics queries that they had raised. *Legal Aid Statistics* includes contact details for users to provide generic feedback to the statistics team, a link to a user feedback survey<sup>22</sup> which is also located on the *Legal Aid Statistics* landing page, and a link to a consultation on statistics about legal aid providers.
- 3.3 The statistics team provided the Authority's Assessment team with a communications strategy as part of its evidence for assessment. The plan includes a summary of the user groups (MOJ, LAA, charities, providers, the public, MPs and the media) that the team sees as the main users of the official statistics, but it does not set out the actions that the team takes to communicate with these individuals and groups. Historically, MOJ's engagement with users has been mainly passive, and based on engagement through its publications, incoming emails, periodic user consultations and referrals from colleagues. The statistics team told us that one channel for direct engagement with its users outside of MOJ and LAA is through LAA contract management team, which oversees the relationship between LAA and the primary legal aid providers. Members of the statistics team have previously attended contract management meetings with legal aid providers, who are also key users of the statistics.
- 3.4 The Authority received a number of representations about the nature, quality, timing and use of a Ministry of Justice ad hoc statistical release titled *Barrister*

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<sup>19</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/463264/statistics-customer-service.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463264/statistics-customer-service.pdf)

<sup>20</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388459/legal-aid-statistics-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388459/legal-aid-statistics-consultation.pdf)

<sup>21</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/417201/laa-statistics-consultation-response.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417201/laa-statistics-consultation-response.pdf)

<sup>22</sup> <http://www.smartsurvey.co.uk/s/6U58M>

*fee income from public sources 2012/13*, published on 2 January 2014. In a published letter to the Minister for the Courts and Legal Aid, dated 13 March 2014, the Chair of the UK Statistics Authority noted that “The Code of Practice for Official Statistics includes requirements for statistics to be published in an orderly manner, accompanied by commentary, analysis, and information on quality and reliability in relation to potential use. In light of these issues, I was pleased to learn that your Department plans to make a formal request, under Section 12 of the Statistics and Registration Service Act 2007, for the Statistics Authority to conduct a statutory assessment of these statistics to determine whether the Code of Practice for Official Statistics has been complied with.”

- 3.5 The Parliamentary Under-Secretary of State for Justice made a request for an Assessment on 17 November 2014. MOJ subsequently incorporated information on fee payments to criminal barristers as part of *Legal Aid Statistics* in December 2014<sup>23</sup>, including a two and a half page analysis in the statistical report. However, the *Legal Aid Statistics* bulletin has not included a dedicated analysis of barrister fee payments since then, and has instead, as part of its June 2015 publication<sup>24</sup>, presented aggregate statistics for the number of legal aid providers completing legal aid work, by area of legal aid work and region. This is accompanied by supporting tables containing information on legal aid expenditure by area of legal aid work and region and a detailed csv file with anonymised case level provider information. While the work of barristers is incorporated into the totals presented and the csv file offers the potential for a more detailed analysis of barrister fee payments, the publication and supporting tables do not present information in relation to expenditure exclusive of VAT or costs and it is not easy for users to replicate the previous analysis.
- 3.6 MOJ published a separate research and analysis paper *Composition and remuneration of junior barristers under the Advocates’ Graduated Fee Scheme in criminal legal aid*<sup>25</sup> on 17 December 2015, which provides information on barrister fee income exclusive of VAT. *Legal Aid Statistics* includes a link to the research report. To help meet user needs, the legal aid statistics team told us that an updated section on legal aid providers will include more detailed information about all providers, including barristers. It is not yet clear whether MOJ’s future plans for the providers section will meet users’ needs in this area, though it is currently consulting users on these plans. *Legal Aid Statistics* published on 31 March 2016 contains a link to a survey asking users specifically about the statistics that they would like to see about legal aid providers<sup>26</sup>. In order to increase the value of the official statistics, MOJ needs to be more open about its plans for addressing these and other users’ needs. This will require it to engage more directly with a broader range of users outside of MOJ and LAA on an ongoing basis. *Legal Aid Statistics* also needs to include more detail than it currently does, on the uses of the statistics, the types of decisions that they are used to inform and on users’ experiences of the statistics.

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<sup>23</sup> <https://www.gov.uk/government/statistics/future-publication-legal-aid-statistics-quarterly-july-to-september-2014-incorporating-barrister-fee-payments-from-public-sources-in-2013-to-2014>

<sup>24</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015>

<sup>25</sup> <https://www.gov.uk/government/publications/composition-and-remuneration-of-junior-barristers-under-the-advocates-graduated-fee-scheme-in-criminal-legal-aid>

<sup>26</sup> <http://www.smartsurvey.co.uk/s/LY8AH/>

- 3.7 While the statistics team's previous and existing user engagement activities are positive, its main user engagement activity is focused on LAA and MOJ users and there is limited evidence of direct, proactive and ongoing engagement with users outside. While the attendance of statistics team members at contract management meetings is welcome, the focus of these meetings is not the development of the official statistics. The statistics team told the Assessment team that in 2016, it plans to place more emphasis than ever on knowing who its users are, how they use its data and that it will publish more information about these users' statistical needs and their uses of the statistics.
- 3.8 During the course of the Assessment, some users raised concerns with us that *Legal Aid Statistics* appeared to focus primarily on presenting a "positive news story" for MOJ and LAA; for example, by reporting on relatively small increases in mediation cases, or presenting the number of claims or applications approved, rather than information on approval rates, or the numbers and proportions of applications rejected. It is the view of the Assessment team that the statistics are impartially presented by the statistics team, but that the perception by some users of a lack of statistical transparency and impartiality will only be resolved through the statistics team having more direct and proactive engagement with users of the statistics outside of MOJ and LAA, demonstrating that they have listened to these users views in relation the future development of the statistics, and being clear and transparent about the limitations of the statistics in relation to their potential uses.
- 3.9 As part of the designation as National Statistics, MOJ should extend its user engagement activity and address users' perceptions of a lack of impartiality by:
- a) Establishing effective methods of direct engagement with a wider range of relevant users and potential users
  - b) Publishing a fuller account of the users and uses of the statistics and the types of decisions that they are used to inform
  - c) Publishing information about users' experiences of the statistical services, the impartiality of statistical reporting, data quality and the format and timing of reports, and
  - d) Publishing a statistical plan outlining its approach to addressing its users' needs for additional analyses<sup>27</sup>
- (Requirement 1).

### **Analysis, accessibility and dissemination**

- 3.10 *Legal Aid Statistics* is a detailed statistical report with supporting data provided in csv and excel. A dedicated guide<sup>28</sup> to using the csv data files is published as part of each quarterly statistical release, as well as a spreadsheet of embedded figures<sup>29</sup> tables. *Legal Aid Statistics* is published quarterly, 13 weeks after the collection reference period, and to a published timetable announced 12 months in advance. The name and contact details for the responsible statistician are

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<sup>27</sup> In relation to Principle 1, Practices 1, 2, 3, and 5 of the *Code of Practice*

<sup>28</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486048/legal-aid-statistics-csv-guidance-jul-to-sep-15.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486048/legal-aid-statistics-csv-guidance-jul-to-sep-15.xlsx)

<sup>29</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486215/legal-aid-embedded-figures-jul-sep-15.xlsx](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486215/legal-aid-embedded-figures-jul-sep-15.xlsx)

included in the statistical report. The statistics team told the Assessment team that on the day of publication, it emails an alert to MOJ and LAA users of the release, such as MOJ legal aid policy and analyst colleagues. The statistics team also emails members of the crime and civil consultative groups to raise awareness of the bulletin. The Head of Profession for Statistics has recently begun using Twitter to publicise the statistics to users outside of MOJ and LAA.

3.11 Although *Legal Aid Statistics* includes a diagram of the availability of legal aid throughout the criminal justice system (see Figure 3), users told us that they would appreciate the inclusion of more context and more effort to improve readability, since they felt that the report was not accessible for the less-expert user. Many users would like to see explicit links made in the narrative to other parts of the criminal justice system, to enable improved understanding of the scope and impact of the changes to legal aid provision. For example, reference to the statistics on police custody or family courts could provide a clearer overall picture. Other users would like to see links to relevant research, such as that about poverty, to inform the narrative in the report. Following the sharing of the draft assessment report with MOJ, the statistics team made some improvements to the context and commentary in *Legal Aid Statistics* published on 31 March. For example, these improvements include: a full discussion of the flow of cases carried out by legal aid providers at police stations, prisons and in magistrates' courts in relation to people accused of or charged with criminal offences; an explanation for the drop in the number of prison law cases and more commentary on immigration cases and family law. To provide context, a helpful link is provided to a website explaining about mental health tribunals.

3.12 During the assessment user engagement, some users informed the Assessment team that they would like to see additional analysis included in *Legal Aid Statistics*. Other users told the Assessment team that they were aware that they could request analyses of unpublished legal aid variables, but did not know which additional variables or analyses were potentially available. Users of the statistics who were also legal aid providers told the Assessment team that they were required to submit information on travelling and waiting times to LAA, but that this information was not included in the published statistics. Users told us that they would appreciate more-detailed official statistics about the:

- broader policy context with a fuller interpretation of trends and caveats
- caseload and expenditure presented separately for England and Wales
- Telephone Gateway, presented consistently with other civil area statistics
- characteristics of clients granted access or those refused, by refusal reason
- number and characteristics of unrepresented defendants
- end-point of cases: whether they are completed by telephone or face-to-face, broken down by area of law
- work undertaken by Barristers and their expenditure exclusive of VAT/costs
- number and size of provider firms and the number of practitioners
- travel and wait time of providers, and the number of hours spent per case
- end of year legal aid expenditure alongside the annual financial accounts

- number of criminal cases with electronic evidence submitted

The statistics team informed the Assessment team that not all of the variables that are collected by LAA as part of its administrative function would be suitable for analysis due to the quality of the data, particularly those that were not mandatory, such as personal characteristics. However, the statistics team informed the Assessment team that they were able to request additional variables from their data suppliers, and that they would look into which additional variables could potentially be used to produce new analyses.

- 3.13 As discussed in relation to Requirement 1 (see paragraph 3.8), some users raised concerns with us about partiality in the presentation of *Legal Aid Statistics*. It is the view of the Assessment team that the statistics are impartially presented by the statistics team and that *Legal Aid Statistics* does provide sufficient coverage across the different areas of legal aid provision, though there is potential to further develop of the level of analytical detail provided for individual areas, subject to the needs of users. The perception by some users of a lack of impartiality will only be resolved through the statistics team having more direct and proactive engagement with users of the statistics outside of MOJ and LAA, demonstrating that they have listened to these users views in relation the future development of the statistics, and being clear and transparent about the limitations of the statistics in relation to their potential uses.
- 3.14 Some users told the Assessment team that they had experienced problems with the usability of the excel and csv files, stating that it was not always easy to find the relevant information. For example, users can opt to reveal more detailed data in hidden columns of the excel spreadsheet by clicking on a 'plus icon', but the icon is small and it is not clear what additional information will be revealed until this is done. Following this feedback during the Assessment, the statistics team has made some improvements to the usability of the spreadsheets, highlighting the availability of more detailed data by including a larger 'plus icon' and an arrow. Users also felt that the usability of the report would be enhanced if the tables and charts presented either referenced or linked directly to the source statistics in the excel data tables. Following this feedback during the Assessment, the statistics team has helpfully referenced the relevant data tables throughout the report. Users also found it difficult to search for the statistics using the gov.uk search engine, and so searched with Google.
- 3.15 The statistics team told the Assessment team that when users outside of MOJ or LAA make requests for legal aid statistics that are not in the public domain, it liaises with LAA's Information Governance team to log it for treatment in accordance with the Freedom of Information (FoI) Act<sup>30</sup>. MOJ's central Data Access and Compliance Unit (DACU) are responsible for MOJ's policy on the publication of responses to all FoI requests across MOJ, including those that involve legal aid statistics. The responses to user requests for analysis and statistics about legal aid are published in a separate area<sup>31</sup> for all MOJ Fols and are not intuitively accessible by users. Users responding to the

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<sup>30</sup> <http://www.legislation.gov.uk/ukpga/2000/36/contents>

<sup>31</sup> <https://www.gov.uk/government/collections/freedom-of-information-disclosure-log>

assessment user engagement told us that they believed that the published FoI responses included information that was not available from the official statistics.

- 3.16 As part of the designation as National Statistics, MOJ should improve the range of analyses that it includes in the official statistics and address users' perceptions about a lack of impartiality in the choice of analyses presented by:
- a) Ensuring that the range of analyses presented meets the needs of a broader range users
  - b) Presenting as much of the data collected from legal aid providers as possible in the official statistics, and where it has not, clearly set out its rationale for this decision, and
  - c) Setting out in the statistical report the developments that it makes in response to FoI requests, and providing links to relevant published FoI analyses, to improve transparency and so that users do not have to make multiple requests for information<sup>32</sup>

(Requirement 2).

As part of meeting this Requirement MOJ should review the additional variables that could possibly be used for analysis, and publish a summary of this information, to better facilitate users' understanding of the potential analyses available, and to inform the future development of the statistics in relation to users' needs.

- 3.17 The statistics team told the Assessment team that it maintains a list of internal MOJ and LAA staff, who have access to *Legal Aid Statistics* for quality assurance purposes. The statistics team said it also reviews the main *Legal Aid Statistics* Pre-Release Access list ahead of each publication. It asks those who are listed if they still require access, and this allows the team to keep the list up to date, account for people leaving and changing roles, or incorporate temporary changes like individuals being on leave or needing additional people to have access due to work pressures. In the event that individuals ask to be added, any additions are cleared with the Head of Profession.
- 3.18 The *Legal Aid Statistics* Pre-Release Access list<sup>33</sup> published on 17 December 2015 included the roles of ten individuals and an unspecified number of special advisors, analysts, policy officers and press officers who had been granted pre-release access. The statistics team informed us that at that time, the actual number of individuals with pre-release access totalled 29 people (three ministers, one special advisor, three analysts not including those involved in the production of the statistics, 11 policy/operational staff, six press officers and five private office officials). The statistics team told us that the large number of individuals requiring access was due to a need to provide separate briefing to officials in both MOJ and LAA. During the course of the assessment, the statistics team undertook the following actions ahead of the 31 March publication<sup>34</sup>: reduced the number of people listed by two; specified the number of special advisors, analysts, policy officers and press officers; and provided a detailed justification for the inclusion of each individual listed. As the risk of a potential breach of pre-release access is increased the greater the number of

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<sup>32</sup> In relation to Principle 8, Practices 2, 3 and 4 and Protocol 3, Practice 3 of the *Code of Practice*

<sup>33</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2015>

<sup>34</sup> <https://www.gov.uk/government/statistics/legal-aid-statistics-october-to-december-2015>

individuals that are granted access, we encourage the statistics team to continue to review the list to keep its membership to a minimum.

### Methods, quality and sources

- 3.19 *Legal Aid Statistics* is produced entirely from data extracted from administrative systems spread across the England and Wales legal system. The statistical report provides a summary of the assumptions made in the calculation of legal aid workload and expenditure, the rationale for the assumptions and the differences between this approach and that on an accounting basis<sup>35</sup>.
- 3.20 MOJ publishes a useful *Guide to Legal Aid Statistics in England and Wales*<sup>36</sup> (*Guide*), which provides a detailed account of the individual data sources used to produce the official statistics, operational context and case studies to show ‘the types of cases where legal aid would be granted and how this would be shown in the legal aid statistics’, and a diagram illustrating the areas of law to which each source relates (see Figure 4). The revisions section of the *Guide* includes a useful account of some previous changes to methods and coverage, but more detail about changes to past and future data systems and their implications for the statistics should be provided (see also paragraph 3.26 of this report).
- 3.21 The *Guide* includes a detailed discussion of the comparability and coherence of *Legal Aid Statistics* with other similar statistics produced in Scotland and Northern Ireland. It provides links to the Scottish Legal Aid Board annual report<sup>37</sup> and the Legal Services Agency Northern Ireland annual reports and accounts<sup>38</sup> in the ‘Related Statistics’ section. The statistics team told us that comparison of legal aid workload volumes between the different UK countries is difficult because of differences between legal processes and justice systems in different jurisdictions, and users are appropriately cautioned.
- 3.22 The *Guide* includes a section titled ‘Relevance’ that includes a generic summary of the main users and uses for the statistics. It sets out an ambition to consult users to increase the team’s understanding of users and their needs. Neither the statistical report nor the *Guide* clearly set out the limitations of the statistics in relation to their current and potential uses. The statistics team told us that users had identified some limitations such as for mediation, where it is not currently possible to link claim starts to outcomes or for immigration where it is not possible to follow the flow of cases from start to completion. As previously mentioned (paragraph 3.12) there are a number of other analytical areas where *Legal Aid Statistics* does not currently meet users’ needs. Where the limitations of the statistics have affected the choice of analyses presented in the statistical report, a more comprehensive account of these limitations should be included to help to address the concerns about partiality in the presentation of the statistics (see also paragraph 3.8, paragraph 3.13).

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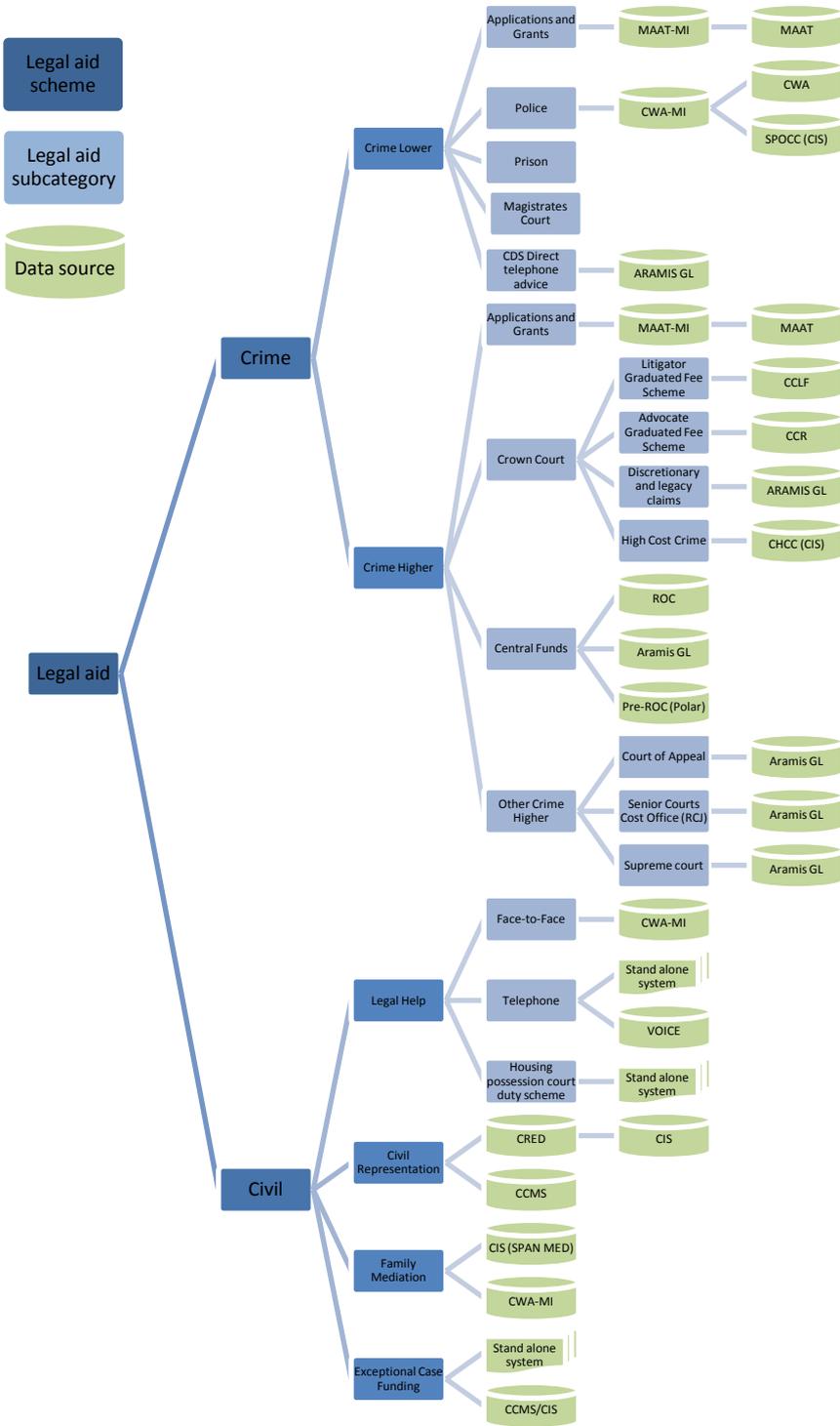
<sup>35</sup> <https://www.gov.uk/government/publications/legal-aid-agency-annual-report-and-accounts-2014-to-2015>

<sup>36</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/486060/a-guide-to-legal-aid-statistics-in-england-and-wales.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486060/a-guide-to-legal-aid-statistics-in-england-and-wales.pdf)

<sup>37</sup> <http://www.slab.org.uk/about-us/what-we-do/annual-report/>

<sup>38</sup> [http://www.dojni.gov.uk/index/legalservices/legal-services-agency-northern-ireland-about-us/legal-services-publications/legal-services-agency-northern-ireland-annual-reports-accounts\\_.htm](http://www.dojni.gov.uk/index/legalservices/legal-services-agency-northern-ireland-about-us/legal-services-publications/legal-services-agency-northern-ireland-annual-reports-accounts_.htm)

Figure 4: Overview of the Legal Aid Agency data systems



Source: Guide to Legal Aid Statistics in England and Wales, Ministry of Justice

3.23 MOJ's document *Quality Strategy Principles and Processes*<sup>39</sup> provides a high level overview of the Departments' overall quality ambitions against the European Statistical System (ESS) statistical output quality dimensions<sup>40</sup>. The document also makes reference to the Authority's *Administrative Data Quality Assurance Guidance*<sup>41</sup> in the background section (see also paragraph 3.27). The statistics team informed the Assessment team that it completes a guidance template on quality assurance for the production of the official statistics each quarter. The team also formally reviews the quality assurance and management practices before, during and after every statistical release to discuss whether they are adequate and operating as intended, and how they might be improved. As a result of these discussions, in autumn 2015 the members of the team held a series of workshops to improve their ability to quality assure each other's work on the production of the published statistics.

3.24 In light of the de-designation of police recorded crime statistics in January 2014 (in Assessment report 268), the Authority published<sup>42</sup> a regulatory standard that confirms the quality assurance arrangements that are required for statistics compiled using administrative data to comply with the *Code of Practice*. The *Administrative Data Quality Assurance Toolkit*<sup>43</sup> is the mechanism that the Authority is using to determine compliance in relation to four areas of practice:

- Operational context and administrative data collection
- Communication with data supply partners
- QA principles, standards and checks by data suppliers
- Producers' QA investigations & documentation

The judgment by statistical producers about the suitability of the administrative data for use in producing official statistics should be pragmatic and proportionate. It should be made in the light of an evaluation of the likelihood of quality issues arising in the data that may affect the quality of the statistics. It should also reflect the nature of the public interest served by the statistics. Statistical producers should determine the types of assurance and documentation required to inform users about the quality assurance arrangements for administrative data.

3.25 During the course of the Assessment, some of LAA data suppliers informed the Assessment team that the changes to the Client and Cost Management System used to record and process legal aid claims could pose some risk to data quality in the short term. The statistics team told the Assessment team that they were aware of the potential risks to the quality of the official statistics, but that they had actively managed these risks by liaising with the IT project teams while the changes were being developed. This helped them to identify potential risks early, make recommendations for amendments and ensure the

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<sup>39</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/463265/stats-quality-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463265/stats-quality-strategy.pdf)

<sup>40</sup> <http://ec.europa.eu/eurostat/documents/64157/4392716/ESS-QAF-V1-2final.pdf/bbf5970c-1adf-46c8-afc3-58ce177a0646>

<sup>41</sup> <https://www.statisticsauthority.gov.uk/monitoring-and-assessment/monitoring/administrative-data-and-official-statistics/>

<sup>42</sup> <http://www.statisticsauthority.gov.uk/assessment/monitoring/administrative-data-and-official-statistics/index.html>

<sup>43</sup> <http://www.statisticsauthority.gov.uk/assessment/monitoring/administrative-data-and-official-statistics/quality-assurance-toolkit.pdf>

continuity of the statistical series. It is the Assessment team's view that the potential for the statistics team to influence changes to LAA systems not only offers an opportunity for MOJ to improve and integrate the existing and new LAA systems to maintain continuity, but also to increase the value of the statistics by influencing the development of systems to better meet users' needs (see paragraph 3.9).

- 3.26 The *Guide* includes a chapter called 'Quality of the Statistics' which presents an assessment of *Legal Aid Statistics* against the ESS dimensions of quality as well as individual sections on 'data sources' and 'data quality'. The statistics team told the Assessment team that it plans to continually expand the data sources and data quality sections within the *Guide*, and include information about the quality assurance of the data in as clear and helpful a form as possible, and in reference to the *Administrative Data Quality Assurance* toolkit. During the course of the assessment the statistics team began to provide evidence to us about the perceived risk profile for each of the data sources used and the current quality assurance procedures undertaken for each source. The Assessment team agrees with MOJ's assessment that, in general, an enhanced level of assurance would be appropriate. To provide assurance at the enhanced level, MOJ will need to publish information about the data quality checks that are carried out by the data suppliers and the team, and information about its judgments about whether any identified data quality issues, including changes to IT systems, pose implications for the quality of statistics for users. Details of audits or third party assurance of the data used should also be explained.
- 3.27 As part of the designation as National Statistics, MOJ should improve the standard of the quality information published alongside the official statistics by:
- a) Publishing information about the strengths and limitations of the statistics in relation to their existing and potential uses
  - b) Publishing a detailed account of the data quality assurance processes used in the production of the statistics, including an account of the data quality checks that are carried out by the data suppliers and the statistics team, and details about any audits or third party assurance of the legal aid data
  - c) Publishing information about the statistics teams' judgments in relation to any identified data quality issues, including IT systems changes, and their implications for the quality of the official statistics in terms of their existing and potential uses<sup>44</sup>

As part of meeting this Requirement, MOJ should refer to the Authority's *Administrative Data Quality Assurance Toolkit*.

(Requirement 3).

### **Impartiality, objectivity and integrity**

- 3.28 MOJ statisticians cannot communicate directly with the media without ministerial authorisation, although analysts are encouraged to communicate with the external communications department, either directly or through a senior analyst, to correct any misinterpretation of statistics. MOJ stated as part

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<sup>44</sup> In relation to Principle 4, Practices 2 and 3 and Principle 8, Practice 1 of the *Code of Practice*

of its evidence for assessment that, in 2015, the Head of Profession for Statistics had presented several 'Introduction to the Code of Practice for Official Statistics' sessions, for non-analytical colleagues which included private office staff, press officers and policy officials. This was to highlight the importance of statistical independence, and only quoting published statistics produced free of political interference in policy and ministerial papers or quotes. The statistics team told the Assessment team that MOJ's Head of Profession for Statistics is responsible for signing off the statistical report before it is published each quarter. Prior to 31 March 2016, the front and back pages of *Legal Aid Statistics* stated that it was a 'Ministry of Justice Statistics bulletin'. However, the statistical report is compiled by the legal aid statistics team based in LAA using LAA data. During the course of the assessment, the Assessment team fed back that the text on the statistical report should be clearer about the roles of each organisation involved in the production and publication of the official statistics, particularly as the statistical report carries both MOJ and LAA logos. In consequence, for the 31 March report, MOJ updated the text of the front page of the statistical report and the website to highlight more clearly the distinct roles of MOJ and LAA in the production of the official statistics.

- 3.29 MOJ has published a Departmental Revisions Policy<sup>45</sup> to which the statistics team adheres. Both the *Guide* and *Legal Aid Statistics* provide links to this revisions policy and the *Guide* also includes a section explaining the applications of the policy to the official statistics. As part of its evidence for Assessment, the statistics team provided several examples of implementing MOJ revisions policy. The examples included revisions due to changes in data collection systems resulting in additional information being available, and to correct errors in a relatively new series. The extent of the revisions made in these instances was clearly highlighted in the text of the relevant sections of the statistical report and in the revisions section of the *Guide*.
- 3.30 During the course of the assessment, some users informed the Assessment team that they had noticed small differences between the figures presented for a particular quarter, and the figures for the same quarter presented in subsequent publications. These users were not clear of the reasons for the differences between these figures and the differences were not highlighted in the supporting data tables. The statistics team told us that the nature of the legal aid administrative systems means that the quarterly data for criminal and civil legal aid figures are routinely revised as new data are received, although this typically results in changes of less than one per cent. During the course of the assessment, the statistics team updated the *Guide* to include information for users about the extent of the revisions made to the data for previous quarters following the receipt of subsequent information and also highlighted affected cells in the supporting data tables, for the 31 March publication.

### **Resources, burden and confidentiality**

- 3.31 Following the 2015 Spending Review and Autumn Statement<sup>46</sup>, MOJ is required to make 50 per cent savings to its administrative budget and 15 per cent overall resource savings, by 2019/2020. MOJ informed the Assessment

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<sup>45</sup> <http://www.justice.gov.uk/downloads/statistics/MOJstats/statistics-revisions-policy.pdf>

<sup>46</sup> <https://www.gov.uk/government/news/ministry-of-justices-settlement-at-the-spending-review-2015>

team that despite these reductions in funding, both MOJ and LAA were committed to producing and publishing statistics on legal aid in accordance with the Code, both for their own benefit and for the benefit of users outside of MOJ and LAA, and that they would continue to make sure sufficient expert resource was dedicated to this. The statistics team told the Assessment team that it believed that it was adequately resourced to influence the forthcoming changes to the online administration of legal aid and other legal aid systems changes going forward.

- 3.32 The statistics team provided us with the *Legal Aid Agency 2015/16 Business Plan*. The plan notes that the statistics team reports to the head of the finance and digital directorate, because the statistics are compiled using financial administrative data. The responsibility for compiling legal aid statistics is set out in the objectives for the Head of Statistics at LAA and the individual team members. MOJ told the Assessment team that senior managers monitor the resources available throughout the year to ensure that statistical work is adequately resourced, and that all resources are employed efficiently in order to deliver the statistical work programme, taking into account feedback from users on statistical priorities.
- 3.33 MOJ adopts the Civil Service and Government Statistical Service (GSS) statistical competence frameworks when recruiting and developing its statisticians and applies the GSS recruitment requirements during the recruitment process. The statistics team also provided a wide variety of examples of training courses and conferences attended or presented at by team members as part of its evidence for this Assessment. MOJ has assured the Assessment team that it takes steps to protect the confidentiality of the data it collects. MOJ publishes details of its confidentiality obligations in its document *Quality Strategy Principles and Processes*<sup>47</sup>. In this document, MOJ states “We will explain where there are limitations to the data source that fall short of meeting user needs, including where we need to apply statistical disclosure control to protect the confidentiality of individuals, establishments and businesses.”
- 3.34 The statistics team told the Assessment team that ahead of making any significant changes to the content of the published statistics it completes a Disclosure Policy Template, which requires a consideration of areas such as: customer needs; sensitivity of the data; risk of disclosure and statistical obligations. The statistics team told the Assessment team that it used disclosure control methods to protect the confidentiality of individuals and that it was presently undertaking work to assess its approach, to make sure that it is comparable to standard practice where possible, and that any deviations are explained. This work is due to be completed by summer 2016. During the course of the Assessment, the statistics team updated the *Guide* to include details about the approach that MOJ takes to protecting the confidentiality of respondents and the disclosure methods used.

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<sup>47</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/463265/stats-quality-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/463265/stats-quality-strategy.pdf)

## **Annex 1: Summary of assessment process**

A1.1 This assessment was conducted from July 2015 to May 2016.

A1.2 The Assessment team – Oliver Fox-Tatum and Caroline Jones – agreed the scope of and timetable for this assessment with representatives of MOJ in July 2015. The Written Evidence for Assessment was provided In October 2015. The Assessment team subsequently met MOJ during January 2016 to review compliance with the *Code of Practice*, taking account of the written evidence provided and other relevant sources of evidence.

### **Summary of users contacted**

A1.3 Part of the assessment process involves our consideration of the views of users. We approach some known and potential users of the set of statistics, and we invite comments via an open note on the Authority’s website. This process is not a statistical survey, but it enables us to gain some insights about the extent to which the statistics meet users’ needs and the extent to which users feel that the producers of those statistics engage with them. We are aware that responses from users may not be representative of wider views, and we take account of this in the way that we prepare Assessment reports.

A1.4 The Assessment team obtained 22 detailed responses from the user engagement. The respondents were grouped as follows:

|                     |   |
|---------------------|---|
| Devolved Government | 3 |
| Central Government  | 5 |
| Academia            | 2 |
| Media               | 1 |
| Professional body   | 8 |
| Lobby group         | 3 |

### **Key documents/links provided**

Written Evidence for Assessment document

