#### Interview design

The key themes explored at stage four are outlined below. Decisions about which themes to explore were based on a combination of existing literature, Welsh’s PhD research,[[1]](#footnote-1) and the findings of stages one to three of the project. The themes were:

* Lawyer behaviour in relation to CCRC cases
* Availability of legal aid funding
* Levels of pro bono work
* Deskilling (levels of experience and supervision)
* Routinisation (work practices and mechanisation)
* ‘Cherry-picking’ of cases
* Use of expert witnesses
* Lawyers’ opinions on, and understanding of, the CCRC

Given the focus of our research, these themes needed to be investigated in relation to legal aid policies, and the interview therefore needed some temporal questions, so that we could examine change in relation to the anchor points investigated in stages one, two and three.[[2]](#footnote-2) However, recognising the unlikeliness that interviewees would be able to accurately pinpoint changes to particular temporal anchor points (especially where the gaps between them are relatively short the only anchor point which was specifically referred to in the interviews was the March 2014 legal aid fee cut. However, we were able to gather more data in relation to the other three anchor points by reference to questions about procedures surrounding legal aid (the LAA was created when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was enacted; anchor two), questions about the instruction of expert witnesses in potential CCRC applications (anchor three), and questions about CCRC practices (anchor two).The March 2014 fee cut was specifically included because our stage one and two analyses suggested that it was the most significant policy change in terms of its effect on levels of legal representation.

The interview guide (Appendix 1) consisted of 28 questions, plus prompts, and was divided into five sections (preliminary questions, CCRC work, legal aid/funding, suggestions, and concluding questions). We decided to ask participants to talk about their CCRC work before inquiring specifically about funding to allow us to see if, when and how funding was introduced as a factor. The guide was there to support the interviewers and to ensure a level of consistency across the data set. However, the interviews themselves were conducted as semi-structured interviews, allowing the researchers flexibility to adjust the interview to each participant by, e.g., asking follow-up questions or exploring new issues raised. The guide was also adapted iteratively through the process of data collection, with new prompts added where necessary and others removed where they proved unhelpful.

Answers to our preliminary questions provided insights into experience levels and indicated lawyers’ ability to reflect longitudinally on changes that had occurred. However, they also served a practical purpose in easing interviewees into the conversation.

The first block of questions asked about people’s experiences of CCRC work in order to build a picture of CCRC work from lawyers’ perspectives and a different view to that provided by CCRC data, files and reports. We asked participants about their level of experience making or assisting with applications to the CCRC and about their decision-making and practices involved in CCRC casework (whether they are currently accepting cases, how cases are generally funded, the number of requests they receive, any patterns or trends in the type of request, processes for selecting/filtering cases, support and/or supervision). We also asked about people’s experiences of the application process, about their opinions on the tests used by the CCRC, and the level and nature of engagement they tend to have with CCRC staff.

The second block of questions asked about people’s views on legal aid payment rates and procedures, and the impacts of these on their decision-making and practices. We asked participants for their thoughts on legal aid payment rates for work on CCRC applications and experiences of obtaining legal aid in CCRC cases (including the application of LAA means and merits tests), before asking specifically whether the 2014 changes to funding affected their ability to work on potential CCRC applications and whether their approach to CCRC casework has changed since 2014. In order not to restrict our analysis, we also asked about any other factors that affect lawyers’ ability to work on CCRC cases. Looking more broadly, we asked about levels of pro bono work, any changes in the use of expert evidence, the potential effectiveness of unrepresented applications, and the value of having lawyers involved in the process.

The penultimate set of questions was forward-focused, looking at suggestions for change and possibilities for improving the process, asking particularly what might encourage or enable lawyers to do more CCRC work and where they thought the CCRC could improve. Our concluding questions checked whether there were any other issues that participants felt were significant or were feeding into the system, as they saw it.

#### Sampling and recruitment

The bulk of our sample needed to be legal professionals with experience of working on potential CCRC cases under public funding. Within this broad category, we wanted to incorporate a range of experience, from paralegals and caseworkers through to managing partners, directors, and Queen’s Counsel, in order to gain a holistic view of the sector.

Besides the three survey respondents who said we could contact them again at stage four (of which two responded), our starting point was the list of firms provided by the CCRC at stage three. Unfortunately, as at stage three, the list made no distinction between firms operating under public funding, and those who only accept work on a privately funded basis since this is not information recorded by the CCRC. We found that the vast majority of firms’ websites were unclear whether they would accept potential CCRC applications on legal aid. Although the list acted as a starting point for recruitment, we did not limit ourselves to it and only made our way through it as and when other leads came to an end. In this sense, our sampling process was iterative rather than systematic. We also asked the participants to suggest other potential interviewees, if they were happy to do so.

Because of the limited information available on firms’ websites, it was not always possible to know ahead of the interview how CCRC work was funded or the extent of the interviewee’s experience. While the invitation email – which mentioned that we wanted to speak to people who had experience of publicly-funded CCRC casework – would have led people without any relevant experience to self-exclude themselves, this meant that we also ended up speaking with people who no longer do CCRC work, and who only do CCRC work on a private and/or pro bono basis. In all cases, the inclusion of this complexity proved valuable, adding nuance and depth to our findings (as intended in qualitative interview research).

As we progressed through the interviews, our decisions about who to approach became slightly more purposive as we sought to build a balanced and diverse sample, in terms of people experience, funding and work practices. These efforts to construct a diverse sample were led by a desire to include different experiences and perspectives, rather than a desire for data that is representative and generalisable (as these are not core concerns in qualitative research).

We also decided to include a small number of lawyers who do not or have not done CCRC work to explore whether funding is part of that decision. In some cases, these people had dabbled in CCRC work and decided to withdraw from it; in other cases, they had not been involved in any capacity. Including a small number of people who had not done CCRC work also allowed us to examine whether CCRC work was perceived differently by those who do not undertake such work.

Where possible we contacted potential interviewees directly and with personal emails, rather than through a general firm email address. In each case, we checked the firm’s website and researched who in the firm was involved in CCRC work. Over the course of seven months, those individuals were contacted via email and invited to take part in the research. In some cases, participants responded positively to the first email, however, we sometimes had to email two or three times before receiving a response. The vast majority of people who responded agreed to be interviewed, although in some cases it was not possible to arrange an interview because of competing demands on their time, reflecting some of the challenges in conducting research with time-poor publicly funded defence lawyers noted by Sommerlad[[3]](#footnote-3).

The switch to remote interviewing from mid-March 2020 (as a result of Covid-19) presented challenges and opportunities for recruitment. In some cases, it was easier to schedule interviews and some participants were more available than they had been before. Interviews could also often be arranged at much shorter notice (but were also cancelled at short notice, something that was not the case ‘in person’). In other cases, however, potential participants commented that the pandemic had dramatically increased their workloads and while they wanted to take part in the research, they would have to wait until things settled, which they still had not done by the end of June when we stopped collecting data.

#### Ethical considerations

Before taking part, participants were sent an information sheet about the project, including information about the research aims, who is conducting and funding the research, and what will happen to the findings of the research. The form stressed that respondents’ participation was completely voluntary, that their data would be treated as anonymous and handled in accordance with the General Data Protection Regulation (GDPR) 2016, and that they could choose to withdraw at any point. Participants were asked to read this information before agreeing to take part, however, in a few cases they had not done this and instead had to read a paper copy (provided by the researcher) just before the interview. Where interviews were conducted remotely this was not possible and we have no way of knowing whether people had read the information sheet.

All participants were required to sign a written consent form. This was sent to participants in advance of the interviews and a paper copy was signed immediately before the in-person interviews (or in a few cases just after). This became more challenging when the interviews moved online. Although some participants returned consent forms ahead of a phone or Zoom interview, many had to be reminded about the consent form. It was usual in these cases for participants to agree to send the consent form after the interview; however, we often had to chase the consent form via email.

There was also a second point of consent after the interview when participants were sent the transcript of their interview. They were invited to review, amend, expand, or comment on their interview transcripts, and were reminded of the last dates at which they could withdraw themselves and their data from the project.

All interview transcripts were thoroughly anonymised, recognising that CCRC work is a niche area of legal practice. All names were removed, including names of current and prior firms, as well as other potentially identifiable details (e.g., local references to towns/prisons; references to other firms or specific charity/innocence projects) and references to individual cases (we did, however, retain some references to particularly well-known cases, where it would not lead to the interviewee being identified).

#### Data collection

Between November 2019 and June 2020, we interviewed 45 legal professions. Interviews varied from 9 to 140 minutes, with the majority lasting 25-70 minutes. Predictably, the shortest interviews were with those participants who did not and had not worked on CCRC cases.

Of the 26 interviews conducted prior to the Covid-19 lockdown in March 2020, 23 were conducted face-to-face and three were done over the phone, at the request of the participant. From late March all interviews were conducted either by phone or via Zoom.

We did not find the nature of the content to be significantly affected by the move to remote interviewing, and the changed format did not appear to damage the ability of the researcher to develop rapport with the participants. There were, however, several ways that the move to remote interviewing may have affected the data collected:

* ***Possible loss of context:*** One of the benefits of conducting interviews in person is the ability to build rapport and relationships. While there is not much time for small talk when conducting research with busy professionals, the small bits of conversation on a walk to a café or through an office, or while being made a coffee in the office kitchen all carry a value that cannot necessarily be measured, and which offer some context for interpreting the interview itself.
* ***Loss of visual cues:*** When it came to phone interviews, the loss of visual cues made it harder to steer the conversation, show interest and indicate when it was time to move on. Given the limited time that interviewees had available, this posed challenges in cases where the participant was difficult to keep on track. As above, the loss of visual cues in some cases may have led to things being misunderstood or misinterpreted, particularly things like sarcasm. It is difficult to assess the extent to which this occurred.
* ***Less control over the interview environment:*** Where interviews took place on the phone, it was difficult to control the space or context, particularly as participants were often fitting interviews between other activities. In such cases, we always offered to call back at a less busy time, but participants generally chose to go ahead. In these cases, the sound quality was usually worse, and participants’ responses may have been less considered. This was less of an issue with Zoom as interviewees were at a computer, typically in a quiet workspace within the home. That said, where participants were sharing their workspace with family or housemates, this could create a lot of background noise, also affecting the quality of the audio recorded.

#### Transcription and analysis

All interview transcripts were transcribed using an intelligent verbatim that retains the spoken quality of the data while removing things like hesitations and false starts that can make it hard to follow. All transcripts were checked and anonymised by the researchers before being sent to the participant. As explained above, we took a cautious approach to anonymisation, recognising that this is a relatively niche area of practice and that participants may therefore be more easily recognisable, particularly to peers/colleagues. As above, interviewees were told that they had a right to partially or totally withdraw their data until a certain date, after which we would be analysing and writing up the data. Only 15 participants responded, of whom seven requested edits or redactions.

The agreed and anonymised transcripts were coded. The initial set of codes was created on the basis of existing literature and the research questions; however, this was expanded iteratively through the coding process to reflect the content of the interviews, albeit keeping the research aims and questions in mind. Coding the data helped us to organise the large dataset produced and helped us to identify the themes/patterns in the data.

#### Limitations

The interviews were intended to examine lawyers’ perspectives about their working practices, their understandings of and ideas about the CCRC, and their feelings about/experiences of the work, particularly since the changes to legal aid. Although it is important to recognise that the ability of interviews to uncover actual working practices is necessarily limited,[[4]](#footnote-4) the different stages of this research provide opportunities for triangulating lawyers’ accounts with other data sources and, where lawyers’ accounts were consistent with one another, we can also surmise that their accounts are close to reality.

The ability to give insight into people’s understandings and perceptions, which then feed into practices and behaviours, is a benefit of interview research. Indeed, interview data is much more suited to exploring links and issues than making representative statements. Reflecting these strengths and weaknesses, the report focuses more on the various issues raised by participants than how many people said this or that. While we attempt to quantify opinions in some cases, this is not always possible and can in fact be misleading, particularly where participants hold mixed, contradictory, or strongly nuanced points of view.

We attempted to overcome any problems associated with self-selection biases by purposively recruiting lawyers from lots of different firms. However, there is likely still an element of bias toward people who do more of this kind of work and/or are more actively engaged in this kind of work as such people may have been more likely to respond to our emails requesting their participation in the project. It may also be that the lawyers we spoke to are part of a more politically active and/or disgruntled sub-section of the profession and that these attributes motivated them to take part.

The data produced and presented in this report should also be seen in the context of the human interactions that produced them. The interviews were conducted by two researchers (Dr Amy Clarke and Dr Lucy Welsh) according to researcher availability and location. As in all interview research, the positionality of the researchers is likely to have impacted on the data in various ways. For example, while both researchers are white female academics, Dr Welsh has a professional background in criminal defence and Dr Clarke does not, potentially encouraging slightly different types of responses from participants. While not a limitation as such, the human dimensions of the research have been kept in mind during our analysis.

1. Welsh, L (2016) Magistrates, managerialism and marginalisation: neoliberalism and access to justice. Doctoral thesis (PhD), University of Kent. [↑](#footnote-ref-1)
2. These anchor points are the introduction of the Easy Read form in 2012, the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, cuts to expert witness fees in 2013, and the 8.75% legal aid fee cut in March 2014. [↑](#footnote-ref-2)
3. Sommerlad, H. (2002). Women solicitors in fractured profession: Intersections of gender and professionalism in England and Wales. *International Journal of the Legal Profession*, 9(3), 213-234. [↑](#footnote-ref-3)
4. Newman, D. (2013). Legal Aid Lawyers and the Quest for Justice, Hart Publishing. [↑](#footnote-ref-4)