

INTERNATIONAL LEGAL AID GROUP CONFERENCE: 1 TO 3 APRIL 2009 – WELLINGTON, NEW ZEALAND

NATIONAL REPORT: ENGLAND AND WALES

LEGAL SERVICES COMMISSION

About the LSC

The Legal Services Commission (LSC) has been responsible for commissioning legal aid services in England and Wales since 2000. We are set up as a non-departmental public body, sponsored by the Ministry of Justice. We have a board of independent commissioners who are responsible for our strategic direction and generally oversee our work. The Commissioners are appointed by the Secretary of State for Justice who is also accountable to Parliament for our activities. Our Chief Executive is the accountable officer for the delivery of legal aid in England and Wales, and for the delivery of the current reform programme.

The LSC has a central office in London and operates from 13 other offices in England and Wales. In addition the Public Defender Service operates from four offices – two in England and two in Wales.

Legal aid services

With an annual budget of around £2 billion, the LSC provides legal information, advice and representation through two schemes: Community Legal Service (CLS) and Community Defence Service (CDS). These underpin the effective and efficient operation of the civil and criminal justice systems in England and Wales by providing fair access to justice, especially, in civil cases, for people who cannot afford it otherwise.

In 2007/08 we helped around two million people get help with their legal problems. We legal aid funded over 2.5 million acts of assistance overall.

Legal help in 2007/08

In 2007/08 there were over 800,000 civil and family acts of assistance, compared with 595,000 in 2004/05. This rises to a million for 2007/08 when civil cases that required representation

are included. There are about 2700 providers in England and Wales offering family legal aid, the largest category.

Our civil providers include not-for-profit organisations, such as Citizens Advice Bureaux and Law Centres, and other advice providers as well as members of the legal profession.

On the civil law side legal aid funding helped over:

- 250,000 people involved in family disputes
- 90,000 people with debt
- 125,000 people with housing problems
- 18,000 people suffering domestic violence
- 90,000 people with welfare benefits

Other categories of civil law include mental health, employment, immigration and asylum, education and community care.

We run periodic bid rounds to increase provision in priority categories of law and where analysis indicates that provision can be improved. In July 2008, for example, we ran a bid round to allocate up to £10 million worth of new matter starts to increase access to family and social welfare law, including the priority areas of childcare and domestic violence. As a result we were able to award around 33,000 extra new matter starts in social welfare law and around 30,000 in family matters.

We provide a Community Legal Advice telephone service and internet site. The helpline provided advice to 300,000 callers in the last year and the website received more than 3.3 million visitors. Following a successful pilot, during which we received around 3,000 calls a month on family issues, we will be extending the helpline service to include family advice from summer 2009.

We also jointly commission, with local authorities, Community Legal Advice Centres and Networks. The centres are located in urban areas, the networks in more rural areas. These offer integrated advice services, including specialist legal advice on debt, employment, welfare, community care and housing.

Five of the new centres are currently open – in Gateshead, Derby, Leicester, Hull and Portsmouth. Every centre is different, serving the particular needs of its local community so funding varies. The average combined funding going to each per year is over £850,000. Gateshead opened in 2007 and the other four during 2008. Citizens Advice Bureaux are partners in running three of these centres. The first networks, offering services in more rural areas, are expected to open during 2009.

Our providers therefore offer a choice of face-to-face, telephone, online and published information. We have also run pilots taking advice services to groups of people likely to need them, eg refugees for victims of abuse and prisons.

On criminal work:

- The Defence Solicitor Call Centre (DSCC) is now the single referral point for all police requests for legal advice to people held in police stations. Recent figures suggest it responds to 98 per cent of requests for advice within 15 minutes.
- Our funded duty solicitors (face to face advice) and Criminal Defence Service (CDS) Direct service (telephone advice), gave legal advice to people being held at police stations on more than 750,000 occasions.
- Our funding ensured representation for people involved in more than 560,000 Magistrates' Court appearances.

During 2008 the CDS Direct service went national, offering service in cases suitable for telephone-only advice.

Resources

The budget for legal aid services is just over £2 billion. This equates to nearly £38 per capita, making the scheme the best funded in the world. Over the last three years the budget has remained at this level, equating to a fall in real terms. The LSC's administrative budget is separate from this and in 2007/08 the final resource spend for the year was £113.5 million.

The LSC has the equivalent of approximately 1700 full-time staff. This number is projected to fall to 1100 during the next two years. In part this represents efficiency savings as a result of increasing the level of electronic working with service providers and in part it is a result of the changing role of the LSC through the reform programme.

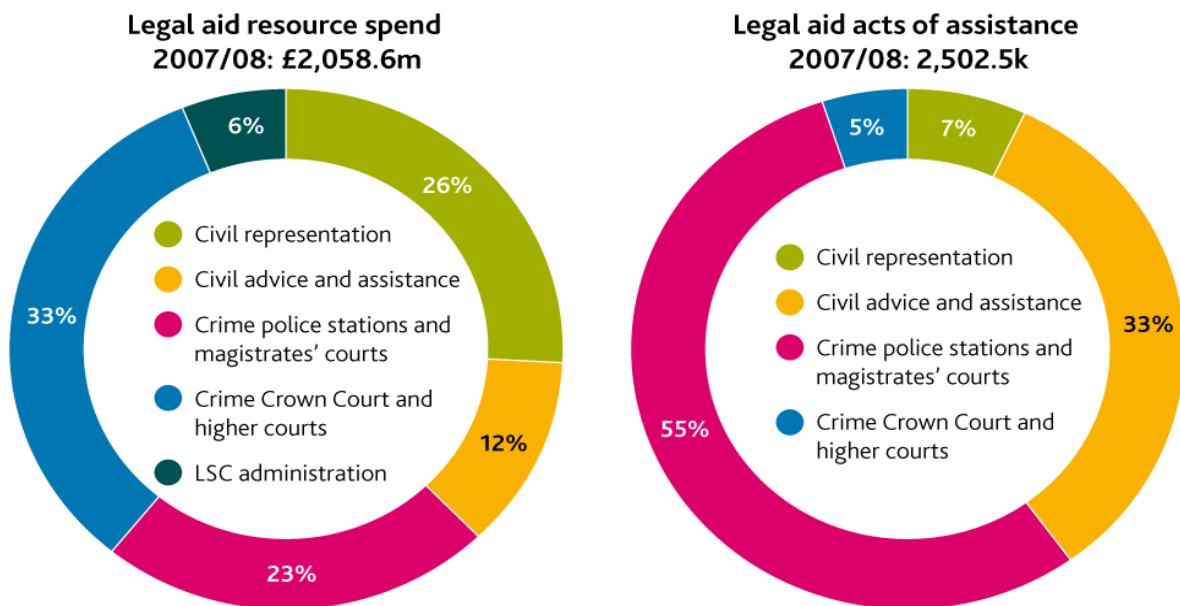
We carry out extensive research in order to reach evidence-based policy decisions. Our Legal Services Research Centre (LSRC) manages the English and Welsh Civil and Social Justice Survey. This was first conducted in 2001 and comprises over 3000 interviews annually, giving a comprehensive view of peoples' experiences of, and responses to, civil justice problems. It now follows individuals over time, enabling us to track the life course of problems and their impact.

Evidence from the survey contributed to the formation of the new community legal advice centres and networks offering integrated services from one point of access, as it had shown that:

- problems do not exist in isolation but connected problems require seamless forms of assistance
- the most marginalised people – and potential legal aid clients – are likely to be bewildered by an ‘advice maze’ if referred on and as a result may not get the help they need
- unaddressed civil problems have a high cost for society.

The survey has also shown that our clients are increasingly using new technologies and that we need to focus on innovative forms of service to reach disadvantaged people in communities. They may be unwilling to approach official sources such as solicitors’ offices or even advice centres.

Legal aid resource spend and acts of assistance in 2007/2008



Eligibility

Generally legal aid in civil cases is available to anyone who qualifies, provided that the case is within the scope of the scheme. Each application is considered on an individual basis and is subject to statutory tests of the applicant's means and the merits of the case.

People in receipt of certain State benefits automatically qualify for civil legal aid. Otherwise people can obtain 'free' assistance if they have a monthly disposable income below £300 and disposable capital of £3000 or less. For amounts above this up to certain limits they will be offered funding on the basis that they agree to pay contributions towards their legal costs.

Certain categories are outside the eligibility criteria. For example, in cases concerning mental health, legal representation for detained persons seeking release is provided without reference to their financial means and with only a limited merits test. The initial period of telephone advice from the Community Legal Advice helpline is also provided free to everyone.

In criminal legal aid, defendants are eligible for legal aid provided they pass the Interests of Justice test. If appearing before the Magistrates' Courts, defendants must also pass a financial eligibility test. Since October 2006 when means testing was introduced in Magistrates' Courts, over 91 per cent of defendants applying for legal aid were granted it.

The Government is currently consulting on proposals for Crown Court means testing to be piloted in five courts as of April 2009. This is likely to be piloted in summer 2009 at five Crown Courts around England and Wales. At present, following a trial or appeal in the Crown Court or Court of Appeal, a Recovery of Defence Costs Order (RDCO) may be made against a legally aided defendant in order to recover some or all of the cost of any representation.

The reform programme

The foundations of the current reform programme lie in the Carter report of July 2006. The response to this *Legal Aid Reform: The Way Ahead*, published in November 2006, set out the programme.

The reforms aimed to:

- Re-focus spending on legal aid so that more people get the support they need

- Ensure fair access to justice so the most marginalised people in society get help and
- Achieve maximum value for money while maintaining or improving the quality of legal aid services.

Legal aid had been one of the fastest growing areas of public sector spending over the previous 25 years, growing at an annual average rate of 5.7 per cent.

Where possible, the aim has been to improve efficiency and value for money rather than reduce scope and eligibility.

The first phase was the introduction of fixed and graduated fee schemes in the majority of both civil and crime work. These encourage and reward efficiency by, where appropriate, moving away from paying practitioners by the hour towards paying for what they actually deliver.

A review of phase 1 civil fixed fee schemes is currently underway and we will consult on any proposed amendments arising from this during 2009. Early data suggests that there have been no significant changes to client diversity following the introduction of fixed fees, nor any adverse impact on black and minority ethnic (BME), women nor disabled providers of legal aid services.

By 2008 there were fee schemes in place in areas such as family cases, mental health, police stations, social welfare advice, immigration and asylum cases, and for Crown Court litigators. An exception is very high cost cases (VHCCs), which are cases lasting more than 40 days at trial. They account for only 0.1% of Crown Court cases but nearly 10% of the total criminal legal aid budget, or £110 million a year.

The Civil Unified Contract was introduced in April 2007, bringing together the contracts for all types of provider, including not-for-profit organisations as well as solicitors. This was challenged by the Law Society, resulting in an agreement reached in April 2008 on the way forward. A Unified Contract for crime cases was implemented in July 2008.

The reform programme is supported by LSC work such as the awarding of £3 million of training grants to 150 organisations. These help to train young legal aid solicitors. Each grant is worth up to £20,000. More than 220 solicitors and not-for-profit organisations across England and Wales applied for grants last year.

The next sections cover more detailed information on recent developments in civil and crime legal aid services.

Civil legal aid

In October 2008 we launched a consultation on bid criteria for the new civil contract for the period 2010 to 2013. Key themes were improving client access to civil legal aid services and quality of those services. The aim is for providers to deliver more integrated services to clients by increasing the proportion of providers offering the full range (ie from legal help through to legal representation) and breadth (eg both public and private family work) of civil legal aid services.

In December we began a joint consultation with the Ministry of Justice on a new family advocacy fee scheme for solicitors and barristers to apply from 2010. This aims to harmonise fees paid to barristers and solicitors where the work is the same. Currently barristers can be paid significantly more.

We have taken steps to encourage clients to settle their family disputes, where possible, through mediation. On average, nearly 70 per cent of clients who attended mediation reached full or partial agreement. Mediation is exempt from the statutory charge apart from exceptional cases. Under the Family Mediation Fee Scheme, over 70 per cent of mediation providers benefit financially, and solicitors are encouraged to make referrals to mediation. Disincentives that were in the system have been removed.

Another area of rising costs is the fees paid to medical experts in care proceedings cases. The LSC has been examining how to manage these better and is piloting arrangements to commission multi-disciplinary teams of health professionals.

Criminal legal aid

In March 2008 we launched the first panels of solicitors and advocates for very high cost cases (VHCCs). However a significant number of advocates failed to sign the contracts they tendered for and were subsequently offered. In order to secure sufficient counsel to act for defendants in these cases, the Ministry of Justice and LSC adjusted the maximum rates payable on a cost neutral basis through a reduction in spend on cases where two advocates were assigned.

Working with the main representative bodies, we have developed proposals for a new panel and, at the time of writing, these are out to consultation.

The Office of Criminal Justice Reform is leading a project to pilot a Virtual Court. The aim is to speed up first hearings by linking defendants in the police station to the court via videoconference. The LSC will ensure that all defendants appearing before a Virtual Court have access to a defence solicitor to represent them, should they so wish.

The cost of providing advice to prisoners on prison law matters has risen from around £3.3 million in 2002/03 to £20 million in 2007/08. We are currently consulting on proposals to introduce controls to address costs and volumes, and to introduce minimum quality standards.

We have been working with our partners in the criminal justice system on making the whole system in Magistrates' Courts more efficient. This package of initiatives is known as Criminal Justice, Simple, Speedy, Summary (CJSSS) and includes more efficient and streamlined processes, as well as more effective listing procedures.

Measures to help people with recession-related problems

In the current economic climate we are seeing increasing demand for advice on debt, housing, employment and welfare benefit problems. These may in turn cause tensions and problems in family related matters.

These are some of the measures we are taking to respond to this demand. Our Housing Possession Court Duty Scheme offers clients at risk of losing their home or property legal help on the day their hearing comes up in the county court. In 2008 we funded 17 new schemes, covering 19 courts.

The scheme now operates in 104 out of the 194 county courts in England, plus a further seven Magistrates' Courts that host possession sessions. One of the 22 courts in Wales is covered by this scheme, although a further 13 courts are covered through outreach under our Unified Contract. The Department for Communities and Local Government, through local government, funded further help in low-volume courts (fewer than 300 possession cases a year).

By the end of November 2008, a total of 22,500 people had been helped by the schemes in 2008/09.

We have extended the hours of our Community Legal Advice Helpline service, so callers will be able to get advice on weekday evenings and Saturday mornings. This move also created over 80 jobs in our provider organisations. From July 2009 the family helpline service will be available.

A total of £13 million was made available for additional debt, housing, employment and family cases, representing 68,000 new matter starts (of which 50,000 are for family cases). Bids were invited by the end of March 2009. This follows the bid round in July 2008 mentioned earlier.

We are also looking for opportunities to increase public legal education. The aim is to promote the skills people need to recognise legal problems and seek help from the right source at an early stage. While this work is not funded directly by legal aid, some of the Community Legal Advice centres do work in their local communities and our CLA website is linked into sites promoting public legal education.

Quality

We put a high priority on quality. However at present we have many more measures in place to assure the quality of work done by legal aid solicitors than for legal aid barristers. This reflects the direct contracting relationship that we have with solicitors, compared with the more indirect one we have with barristers, who are alternatively selected and instructed by solicitors. Measures for solicitors range from a Specialist Quality Mark (SQM) to independent peer review.

For barristers we have introduced the Quality Mark for the Bar (management standard). As it is not a pre-requirement for a contract, only a relatively limited number of chambers hold it. We routinely rely instead on solicitors, under the SQM requirements, to complete various checks and balances whenever they instruct barristers. However, we recognise that this will not be appropriate as we move towards a more open and competitive market. Therefore, with the Ministry of Justice, we have embarked on a stand-alone quality assurance mechanism that we are developing in collaboration with the advocacy profession – the Bar Council, Law Society, Bar Standards Board (BSB) and Solicitors Regulation

Authority (SRA), as well as the Crown Prosecution Service, the Judiciary and other stakeholders.

In early 2009, we will be piloting the Quality Assurance for Advocates Scheme (QAA) and implementing it from April 2010. This has been developed with key representative bodies and will directly assess the competence of all advocates (solicitor advocates and self-employed barristers) according to the complexity of work undertaken. The proposed scheme will be piloted and implemented in criminal defence work initially and then rolled out to cover all other areas of publicly funded work. Our aim is for the scheme to be owned by the profession and managed by their regulators (the Bar Standards Board and Solicitors Regulation Authority).

Next steps

We believe that, ultimately, the introduction of best value tendering (BVT) remains the best way of establishing services that provide appropriate levels of quality and access at a price that is viable for both the legal aid provider and the taxpayer.

In 2008 we ran an initial consultation on the principles of BVT for crime work and will follow this up with a consultation on proposals during 2009. We have not yet consulted on proposals for civil work and have undertaken not to introduce civil BVT for mainstream services earlier than 2013.

Increasingly we work in close partnership with representative bodies including the Law Society and the Bar Council, developing proposals together and consulting regularly. This approach was strengthened by the agreement reached in April 2008 on the Civil Unified Contract. We also hold regular sessions with our providers across England and Wales to listen to their views on developments. We expect to see this trend to continue. We jointly commission services with some partners, including local authorities on the Community Legal Advice centres, and this is another route for maximising reach and value for money.

The LSC itself is undergoing reform. We are changing from a body that administers legal aid in detail towards one that commissions quality legal aid services. We will shape the market and use the market power of legal aid, currently representing about 10 per cent of the legal services market, for the benefit of the client and the taxpayer. By being a commissioner of services and expert procurer, we will play the role of 'demanding consumer' on behalf of clients who, generally, are the more marginalised people in our society.

We are operating in a changing legal landscape in England and Wales. The Legal Service Act of 2007 is changing the way legal services are regulated and increasing the choice and flexibility of business structure possible for providers of legal services – the Alternative Business Structures set out in the Act. We are also seeing a growth in the number of solicitors with Higher Rights of Audience, qualified to offer full advocacy services to clients. There is an oversupply of new solicitors and barristers. These and other developments are impacting on the market.

2009 is the 60th anniversary of the passing of the Legal Aid and Advice Act in 1949 which set up legal aid in England and Wales. During the year we aim to increase knowledge and understanding of legal aid services, and so build commitment to their future.

Carolyn Regan

Chief Executive

Legal Services Commission

England and Wales

February 2009