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# Legal aid in a changing world

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## Research into the reduction in civil legal aid applications in Scotland between 1992 and 2001

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October 2001

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### Research into the reduction in civil legal aid applications in Scotland between 1992 and 2001

Legal aid allows people who would not otherwise be able to afford it to have the help of a solicitor, and in some circumstances an advocate, for their legal problems. To receive legal aid, applicants must consult a solicitor who will help them complete an application.

The Scottish Legal Aid Board is responsible for the administration of legal aid in Scotland. It is a non-departmental public body set up under the Legal Aid (Scotland) Act 1986. Board members, including the Chairman, are appointed by Scottish Ministers. Around 300 staff report to its Chief Executive.

#### **Mission Statement**

To develop and deliver appropriate access to quality legal assistance for those eligible, in a cost effective manner.

#### **Strategic Objectives**

- to achieve consistent, timely and sound decision making at all stages of an application for legal assistance
- to achieve consistent, timely and sound decision making at all stages of assessing and paying accounts
- to ensure effective financial management of the Legal Aid Fund
- to improve the effectiveness of the delivery of our service while achieving a reasonable balance between cost and quality
- to communicate effectively with applicants, opponents, their advisors and other stakeholders in a clear, concise, timely, informative and pro-active manner
- to provide sound advice to Ministers and Parliament on the current operation and development of the provision of legal aid.

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# Executive Summary

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1. The Scottish Legal Aid Board has been concerned to establish the reasons behind the significant decrease in the volume of applications for civil legal aid. Applications are currently at their lowest level in almost twenty years and around 15,000 lower than their peak year of 1992/93. This report presents the results of various analyses undertaken to try to explain this drop in numbers.
2. These analyses explore changes in the use of civil legal aid, the impact of shifts in financial eligibility, the possible deterrent effect of the contributions payable by some people towards the cost of their case, the availability of solicitors' outlets providing a civil legal aid service, changes in legal aid legislation and Board policy and changes in the wider legal system. The work was carried out by Board staff and by the David Hume Institute, which looked at the changes in eligibility.

## Key Findings

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3. The three most commonly suggested explanations for the drop in civil legal aid applications are that: fewer people are applying because fewer people are eligible; those who are eligible are put off by the size of the contribution payable; people find it difficult to access civil legal aid because fewer solicitors are offering the service. However, the Board's analysis suggests that these factors cannot themselves explain a reduction of the size seen since 1992/93:
  - Overall financial eligibility fell by 2 percentage points between 1992/3 and 1998/9, from 57% to 55% of the population. This means that around 110,000 fewer people were eligible in the later year, which in itself would account for around 650 applications per year. Within the 2.8 million eligible population, there has been a major shift between eligibility with and without a contribution, with around half a million fewer people eligible without a contribution. The analysis suggests that both the overall reduction in eligibility and the shift in balance to contributory eligibility will certainly have contributed to the reduction in applications. This is likely to account for around 30% of the overall reduction between 1992/93 and 2000/01.
  - Perhaps of greater significance is that the bulk of these changes were the result of an explicit policy change in 1993 which had a very significant impact on the nature of eligibility and, as a result, applications. Any reductions in or movements within eligibility since 1993/94 will have been as a result of index-linked financial limits failing to keep pace with rising national income levels. While most of the eligibility related reduction in applications was seen within two years of the 1993 changes, most of the overall drop in applications has actually occurred since then. Indeed, no more than 13% of the drop in applications seen between 1994/95 and 2000/01 can be explained by changes in eligibility. Accordingly, changes in eligibility offer only a partial explanation for the *continuing* drop in applications.
  - With regard to the deterrent effect of the contribution, the 1993 changes did affect the number of applications from people likely to be assessed with a contribution, and more of those who did apply turned down an offer of legal aid with a contribution. Since then, the evidence suggests that people eligible with a contribution are, on the whole, only very

slightly less likely to apply for civil legal aid than in the past. However, take-up of offers has improved, particularly since the Board extended payment periods for those with contributions above a certain level.

- Although the number of solicitors' outlets making one or more application for legal aid fell between 1998/9 and 2000/1, there were still 1041 such outlets in 2000/1. This figure is actually higher than the 1029 recorded in 1992, the year in which civil applications were highest.
4. These analyses suggest that there must be other factors in the reduction in applications. In order to identify such factors, the Board examined in greater detail the changes that have occurred within civil legal aid. This analysis showed that the past decade has seen substantial changes in the profile of applications for civil legal aid, which themselves suggest additional avenues for analysis:
- Although the balance between pursuers and defenders and males and females has remained broadly unchanged, there have been important shifts within these categories. In the early 1990s females were far more likely than males to use legal aid to pursue a case, and less likely to use it to defend one. By 2000/1 there were more female defenders than male defenders. Although still greater in number than male pursuers, the proportion of female pursuers had also decreased, from 51% to 44%.
  - The types of case for which applicants seek legal aid have also altered: although still the single most common category (accounting for over 20% of applications), 'fault' based divorce applications have fallen by half, whilst applications for contact have increased. Applications for reparation have fallen, but less so than most other areas.
5. These changes reflect, to a large extent, a reduction in ordinary cause and summary cause court business, as well as wider societal changes:
- In particular, the number of divorces granted fell by 13% from 1993 to 2001. Grants of divorce on 'fault' grounds fell by 44% over the same period. It is, therefore, likely that fewer people will require legal aid for such cases.
  - Alongside this apparent reduction in demand for legal aid in the largest category of applications, there is some evidence that there has been a change in the approach taken to the resolution of family disputes. The less litigious approach of many family law practitioners, alongside a growth in mediation and legislative changes such as the non-interventionist approach embodied within the Children (Scotland) Act 1995, suggests a greater emphasis on resolving matters involving separation and the care of children without recourse to the courts.
  - Further support for this suggestion comes from an analysis of advice and assistance. The use of advice and assistance in relation to family matters has fallen less markedly than civil legal aid (and indeed use of advice and assistance in civil matters as a whole has increased over the same period). The cost of advice and assistance in family cases has also increased

rapidly over the period in question. This suggests that advice and assistance may be used more often than in the past to resolve such matters without the need for civil legal aid.

## Conclusions

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6. Overall, it would appear that the fall in applications for civil legal aid
  - is due primarily to external changes in the way dispute resolution is conducted, including a reduction in court business, particularly in family and matrimonial proceedings;
  - although overall financial eligibility has changed little, the 1993 eligibility changes moved a substantial number of people from being eligible with no contribution into contributory eligibility. The level of contributions also increased. These changes did have a significant effect on the number of applications in the following two years. Even so, over the period from 1992/93 to 2000/01 as a whole, the impact of changes in eligibility is outweighed by that of external changes. In particular, the impact of changes in eligibility *subsequent to* those made in 1993 has been relatively minor;
  - Overall numbers of solicitors' outlets are higher than in 1992, although there has been some reduction over the past three years. This, on the face of it, would not therefore explain a reduction in numbers of applications.
7. The Board is nevertheless concerned that certain aspects of the system make access to civil legal aid more difficult for certain potential applicants. The Board is seeking to improve the operation of the system to remove as many barriers as possible. For example, the Board has made proposals for changes to the operation of the special urgency provisions and the contributions system with the aim of making civil legal aid more accessible to the particular applicants - or potential applicants - affected by these parts of the system, as well as looking at ways of reducing the bureaucracy and complexity surrounding civil legal aid.
8. Further research will flow from the findings presented in this report. For example, this report suggests the need for a more detailed analysis of the distribution of solicitor outlets. Although the overall picture perhaps suggests little cause for concern, we are keen to explore further possible variations between different parts of the country. In addition, the distribution of work within firms, particularly in light of the stagnation in fee levels, may also merit further examination.
9. Similarly, while eligibility has not been the strongest factor in the reduction in applications in recent years, we intend to extend the work already carried out to consider the interaction of the different eligibility rules for advice and assistance and civil legal aid. Such further research will help improve our understanding of other aspects of legal aid and help ensure that potential problem areas are identified before they can impact negatively on access to civil legal aid services.

# Introduction

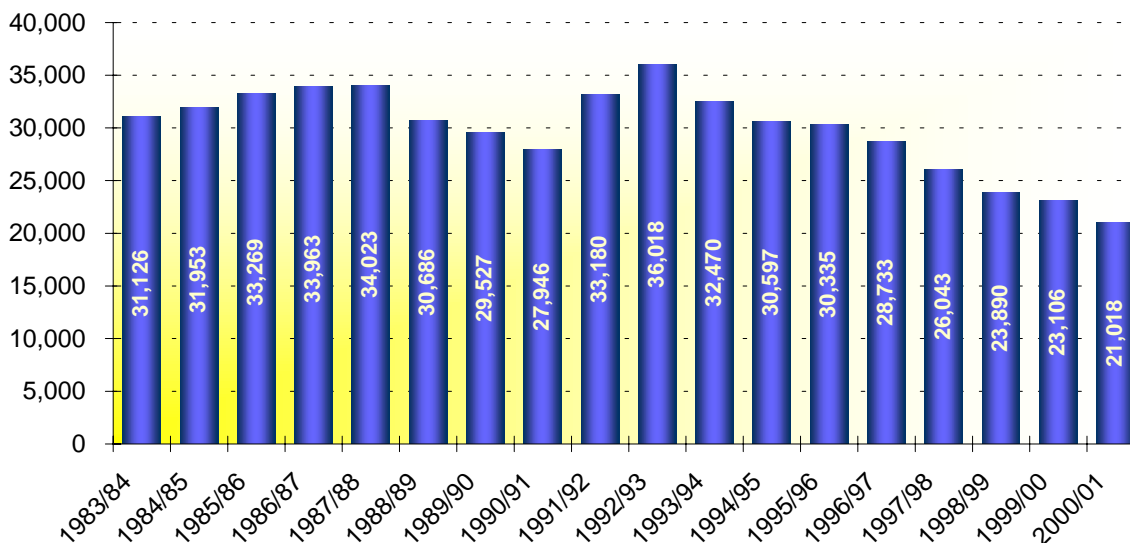
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1. The Scottish Legal Aid Board has been concerned for some time to establish the reasons behind the drop in the number of applications for civil legal aid since its peak in 1992/3. This report presents the results of various analyses undertaken to explain this.
2. The report is in seven main sections. The first of these sets out a broad analysis of the changes in applications for civil legal aid based on figures published in our annual reports. Secondly, the report considers in more detail the shifts within the broad categories of civil legal aid and goes on to look at some specific potential explanatory factors. Section C relates to changes in eligibility for legal aid since 1992/93. This work was carried out for the Board by the David Hume Institute. Section D considers the impact of contributions. Section E relates to the supply of legal aid services by solicitors and focuses on a mapping of this supply over time and in specific subject areas. Having considered each of these potentially major factors, the report considers in Section F whether there have been any more subtle changes within legal aid that may have led to a reduction in applications, focusing on changes to the legal aid legislation and shifts in Board policy. Section G considers external factors, focusing principally on changes in the use of the courts and in society in general. Finally, Section H summarises the report's findings and conclusions and considers their implications.

## Section A: Broad trends in civil legal aid applications

3. Chart A-1 below shows the number of applications for civil legal aid since 1983/4. The period covers the last four years during which the Law Society was responsible for legal aid and the time since the Board came into being, in 1989.

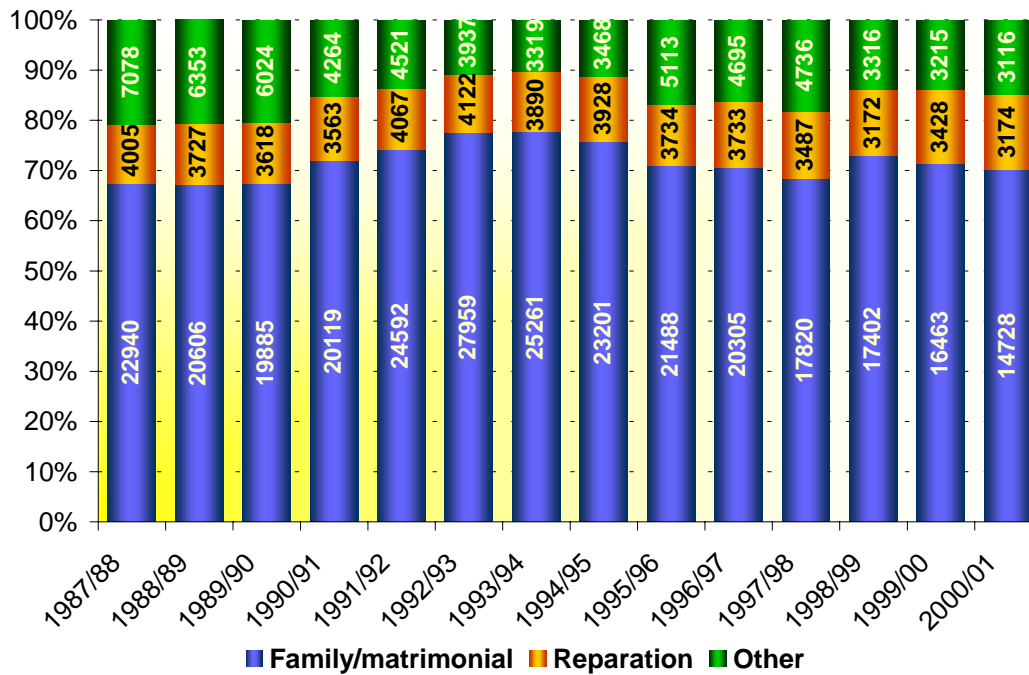
Chart A-1: civil applications



4. There are two main points to note from this chart. Firstly, the drop in legal aid applications is often assessed against 1992/93. However in many respects this was an atypical year. Having risen steadily from 1983/84, applications declined from 1987 to 1991. A sudden and considerable increase in the number of applications in 1991/92 and 1992/93 creates a peak from which applications have steadily fallen. Changes in eligibility came into effect in April 1993. There is some evidence to suggest that there was a rush to submit applications in the two months leading up to the introduction of the changes<sup>7</sup>. It appears that this had the effect of artificially increasing the number of applications received in 1992/93 in comparison to the years immediately before and after. However, it was not until 1996/97 that applications fell back to the level seen in 1989 to 1991.
5. Nevertheless, the main feature of the chart remains the steady and continuing drop in applications. Applications in 2000/01 are 42% lower than in 1992/93, and 25% lower than the pre-1992/93 low point of 1990/91. Thus while one might argue that 1992/93 was itself an atypical year, each of the last four years has been lower than the previous low point of 1990/91.
6. Chart A-2 shows the different subject matters for which applications have been received since 1987 (comparable earlier data are not available).

<sup>11</sup> The monthly figures for applications received were unseasonably high in February and March 1993. Further, despite the number of applications falling both in 1993/94 and 1994/95, there were considerably more applications *decided* in 1993/94 than in the previous year, suggesting that a backlog inherited from 1992/93 was cleared that year.

**Chart A-2: civil applications - main categories**



7. This shows that civil legal aid has always been dominated by family and reparation actions. The expanding number of applications in the early 1990s came disproportionately in family cases (although the number of reparation cases also increased). Just as the rise was disproportionate amongst family cases, so has been the subsequent fall. These figures are discussed in more detail later in this report.

## Section B: Detailed analysis of applications for civil legal aid

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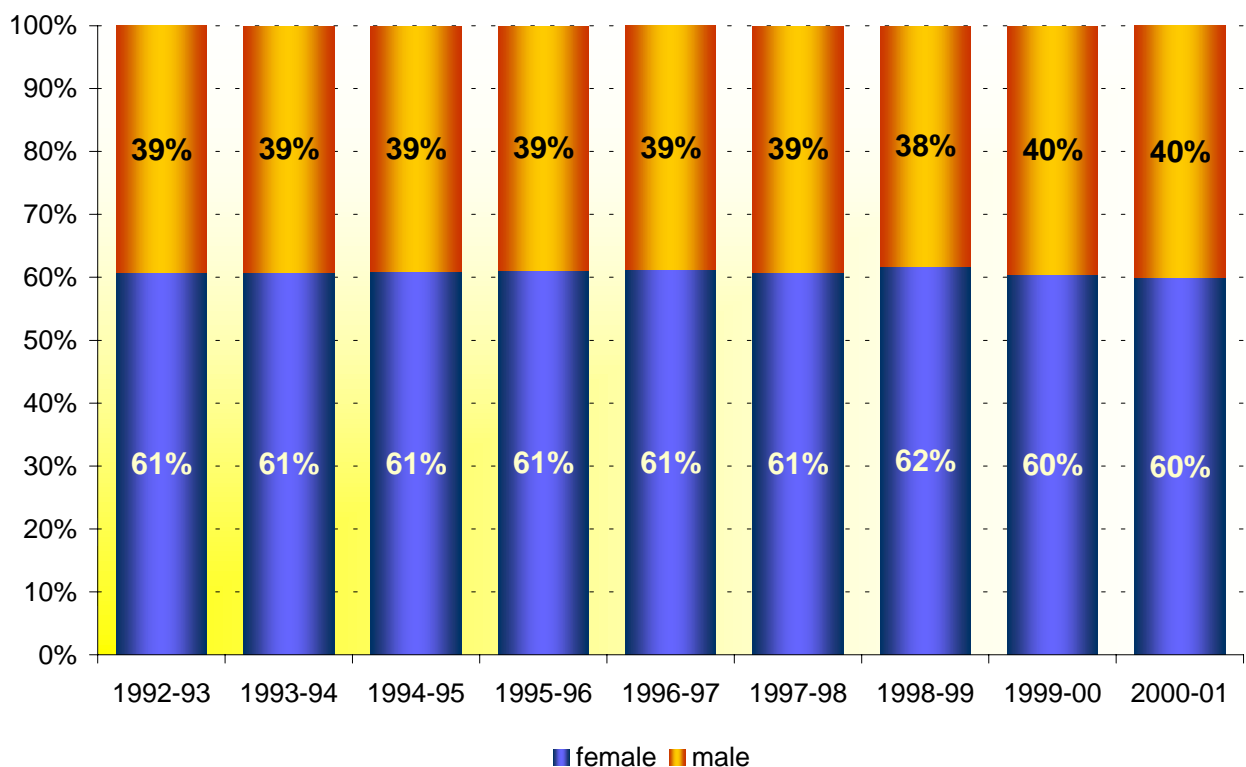
- Section A showed that there has been a large fall in the number of applications for civil legal aid. As a first step in considering the causes of this drop, it is important to study it more closely to see if there are any other trends hidden within the broad downward movement.
- Firstly, we analyse applications for legal aid by gender and by instance.

### Changes in Gender & Instance

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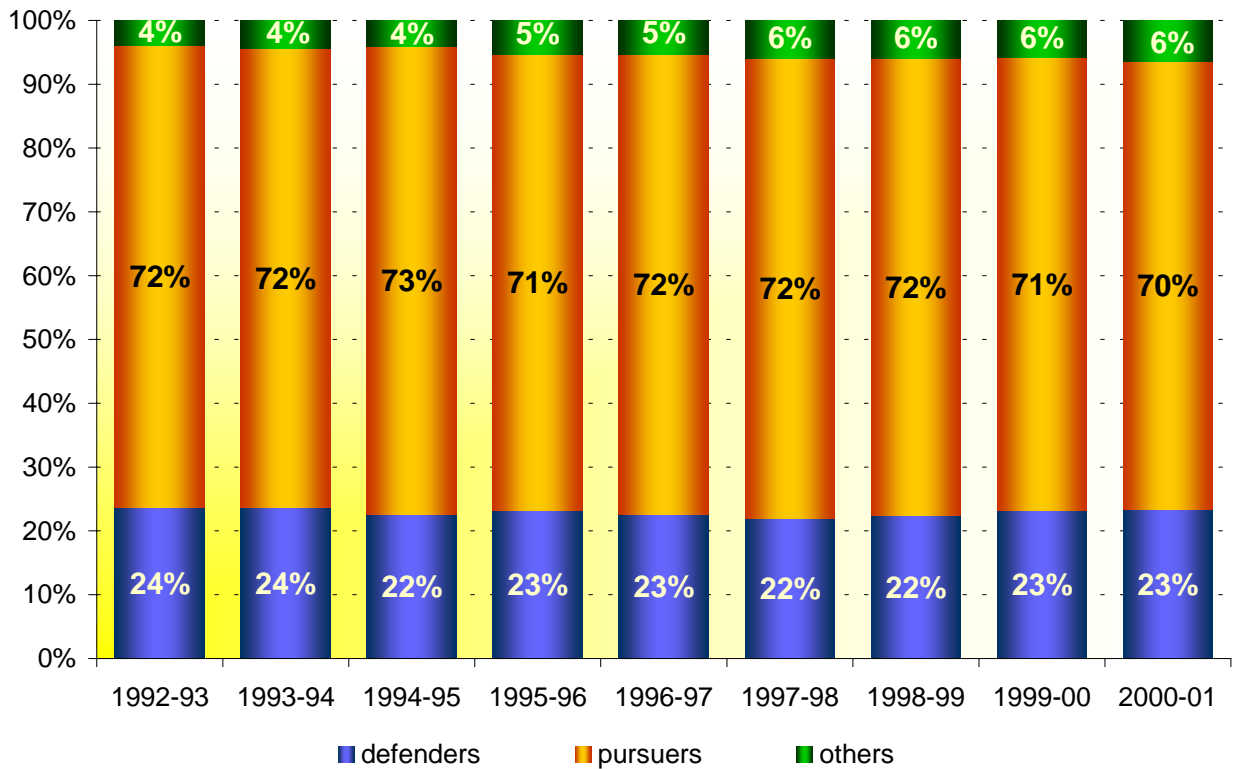
- Chart B-1 shows that there has been no significant change in the gender balance of applications for legal aid over the period during which volumes have dropped (we do not have data for the years prior to 1992). This shows that around 60% of applicants are female and 40% are male, compared to 61% and 39% respectively in 1992/93.

Chart B-1: applications by gender



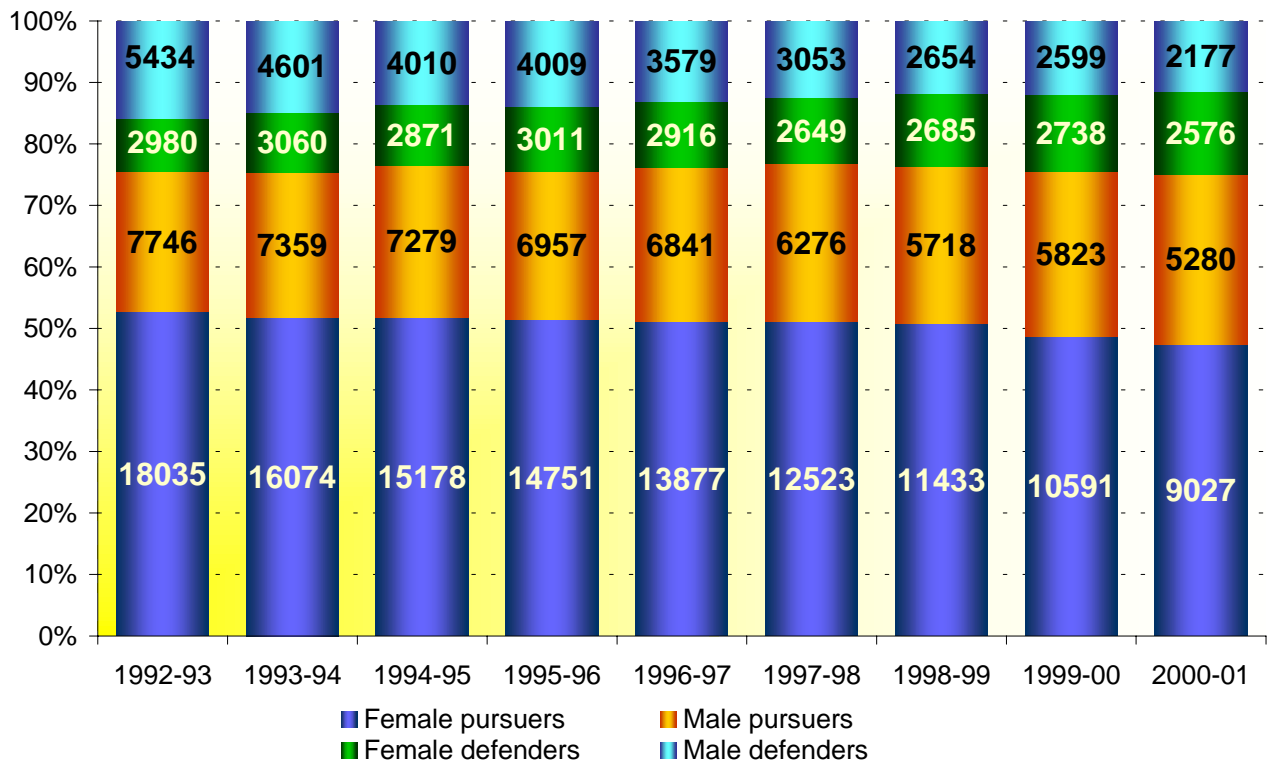
- Chart B-2 indicates that there has been little change in instance, that is the legal interest of the applicant for legal aid. 23% of applicants are seeking to defend an action taken against them, compared to 24% in 1992/93. There has been a slight drop in the proportion of pursuers, but only from 72% to 70%. The difference between these figures is accounted for by slight increases in the proportions applying as party minuters, appellants, petitioners and respondents. These four categories now account for 5% of all applications, compared to 4% in 1992/93.

**Chart B-2: Applications by instance**



12. In general terms, the picture is one of relative stability in both gender profile and instance. However, when one combines the two, one starts to see more significant changes (see Chart B-3 below).

**Chart B-3: applications by gender and instance**



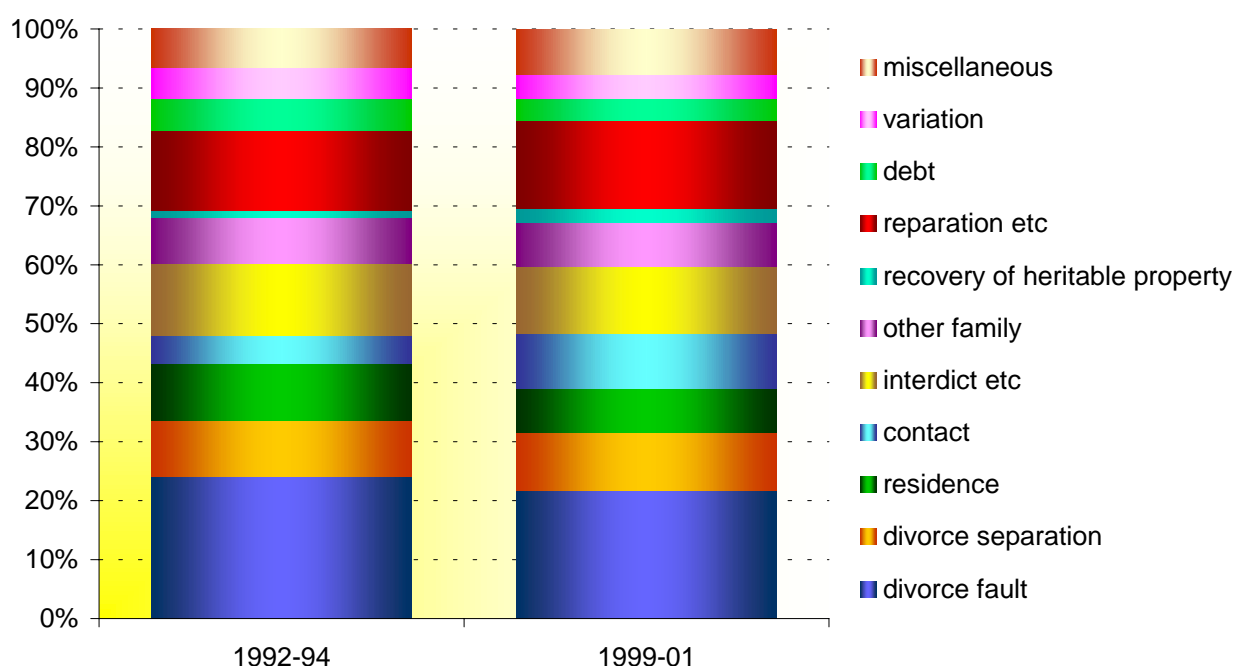
13. Looking only at the two most significant categories (defenders and pursuers) there have been steady but marked counterbalancing shifts in the gender balance. In 1992/93, 8% of applications came from female defenders, while 15% came from male defenders. The balance here has switched markedly, with the number of female defenders now outweighing that of their male counterparts (13% to 11%). The opposite is true for pursuers, where the female/male balance has shifted from 51%/22% in 1992/93 to 44%/26% in 2000/01. Thus while there has overall been little shift between male/female or pursuers/defenders, this is masking significant movement within the categories. The reduction in female pursuers may itself have an effect on the number of male defenders. However, as the proportion of male defenders has fallen more rapidly than female pursuers, there must also be other influencing factors.
14. To find out in more detail where shifts are occurring, it is necessary to examine the types of cases for which the four groups seek legal aid. Looking only at areas that involve significant numbers of cases, one sees that there have been a few marked shifts. For both male and female defenders (who together make up less than one quarter of all applicants), the most significant reductions have been in relation to payment actions, although both have also seen large (relative) increases in relation to recovery of heritable property. Amongst pursuers, reparation is becoming less important to males and more so to females; however, reparation is still the most common single action amongst male pursuers in legal aid.
15. However, perhaps the most interesting shifts relate to family law. Although there has generally been little gender/instance change in relation to divorce, there *has* been alteration in actions relating to children. A far higher proportion of men are now pursuing actions for contact, with the corollary that a higher proportion of women are defending such actions. In 2000/1 residence and contact cases accounted for 27.2% of applications from male pursuers, compared with 18.6% in 1992/93. Meanwhile, fewer females are pursuing actions for residence, an effect balanced by the reduction in males defending such actions. Far more so than in 1992/93, legal aid is being used by men to *pursue* child related actions rather than to defend them, with the opposite being true for women. The most important types of action for each gender and instance are shown in Table 1 in Appendix 1.
16. The shift in family actions is significant in relation to the balance between male and female defenders and pursuers and may suggest that there have been changes in the way that family cases, especially those involving children, are being approached. It is possible that this change in approach may itself have something to do with the drop in volumes. This possibility is explored in Section G. However, these shifts should also be viewed in context: residence and contact cases account for only 17% of all civil legal aid applications. It is, therefore, also important to look more generally at the usage of civil legal aid and to see if there have been any significant shifts in balance.

## Changes in Case Type

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17. Chart B-4 below compares the relative importance of different case types within civil legal aid in 1992-4 and 1999-01. An *average* based on two years data has been used in each case to try and minimise any effect of fluctuations between years.

**Chart B-4: applications for civil legal aid**



18. The chart shows that overall, although there have been some changes, the *relative* importance of different case types has changed fairly little. The four largest family law case types (fault-based divorce, non-fault-based divorce, residence and contact) accounted for 47.9% of cases in 1992-4, in 1999-01 they accounted for a virtually identical 48.3%. However, within this group contact has become more common, apparently at the expense of fault-based divorce and, to a lesser extent, residence. In fact, contrary to the overall civil legal aid trend, the number of applications for contact has grown over the period, to a two-year average of 2,031 from 1,634. Other categories to have grown are recovery of heritable property (to a two-year average of 528, from an average of 410 applications in 1992-4) and judicial review (a two-year average of 230, from 199 in 1992-4).
19. Fault-based divorce has certainly seen the most dramatic fall in numbers within the time period; it was down by 4,535 (47.6%) between 1992/3 and 2000/1. However it is still the largest single category, accounting for over 4,000 cases per year during 1999-2001. Chart B-5 in Appendix I shows the change in applications by category, based on the two year average figures.

## Summary

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20. Looking at the case types by gender and the most common instances of pursuer and defender gives similar findings to those seen overall. Amongst males and females, pursuers and defenders, the case type that was most common in 1992/3 is still so in 2000/1 as Table B-1 in Appendix 1 shows.
21. Overall, the Board's figures indicate that, although there have been some significant shifts in the profile of civil legal aid applications by different types of applicants, the *relative* importance of different case and applicant types has not altered dramatically between 1992/3 and 2000/1.

Although the largest single category – fault-based divorce – has fallen more than the average, there have also been significant drops in most other categories. Therefore the drop in civil legal aid applications cannot be accounted for with reference to any single type of case. Similarly, although there has been a significant shift in gender and instance, applications from all the four principal instance/gender groups have fallen. Therefore neither can one explain the fall in civil legal aid applications based on just one group.

22. However, there is some suggestion that there may have been changes to the approach taken in family law cases, particularly those relating to children. As family law makes up such a large proportion of civil legal aid it is worth investigating these changes further, and this is done in section G below.

## Section C: Eligibility

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23. There has been much concern that fewer people are applying for legal aid simply because fewer people are eligible. Significant changes were made to the rules for determining eligibility and calculating contributions in 1993. The lower income limit and allowances for dependants were reduced and the amount of the contribution was increased from one-quarter to one-third of disposable income above the lower income limit. Appendix 2a gives details of these and subsequent changes to income limits and allowances. As shown below, the 1993 changes did not significantly reduce overall eligibility, but did change the balance between the non-contributory and contributory bands. Since then, although upratings have been made to the eligibility limits (the lower capital limit excepted), there is a widespread perception that eligibility has not kept pace with rising national prosperity and that, as a result, substantial numbers of people have 'drifted' out of legal aid.
24. To assess whether such changes have occurred and, if so, whether this might explain the fall in applications, the Board commissioned the David Hume Institute to model the effect of changes in the legal aid means test on the population who would be eligible to receive civil legal aid.
25. The population data was drawn from the Family Resources Survey (which records income, savings, receipt of benefits and so on). This data is available for 1993/4 and for 1998/9, but the data collected in each of the two years also gives a reasonably accurate indication of family resources in the preceding year. For year on year comparative purposes, this report uses the 1993/4 population data to assess eligibility in both 1992/3 and 1993/4, whilst 1998/9 population data is used to assess eligibility in 1998/9. A more detailed analysis and methodological description is provided in the full report<sup>2</sup>.
26. The surveys of family resources use 'benefit units' as their unit of analysis, rather than households or individuals. The term 'benefit unit' applies to a person or persons who would be considered as one unit for the purposes of assessing eligibility for state benefits. It does not, however, mean that the person or persons have actually received, applied for or indeed been eligible to receive state benefits: the entire population can be broken down into benefit units. A household with two married adults and a school-age child would consist of one benefit unit; one with two married adults, a school-age child and an older child in employment would comprise two benefit units. As such, benefit units are simply an alternative to households, with the average household comprising of slightly more than one benefit unit.
27. It should be noted that it is an individual, not a household or benefit unit, that applies for legal aid. In most circumstances, the income of the applicant's spouse or cohabitee will be taken into account in the determination of their disposable income. Thus the benefit unit approach is broadly consistent with the legal aid means testing process. If a benefit unit is classed as eligible for legal aid, this means that each member of that benefit unit would be eligible for legal aid.
28. The research carried out by the David Hume Institute expressed its findings in terms of the proportion of benefit units eligible for legal aid. As each individual in an eligible benefit unit will be eligible for legal aid, the proportion of the population eligible will be more or less the same as the proportion of benefit units. However, this assumes that the eligible benefit units are the

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<sup>2</sup> 'Eligibility for Legal Aid', Professor Brian Main, The David Hume Institute, on behalf of the Scottish Legal Aid Board, available on request from the Board.

same average size as the non-eligible benefit units. Although that data was not available, the figures below show that more than half of all benefit units are eligible. This means that they can hardly be described as atypical. Nevertheless, the figures in this section on the size of the eligible population should be treated with some caution. They are used simply to indicate the approximate size of the eligible populations in each of the years considered.

29. A further complication is that, in cases in which the applicant's spouse or cohabitee has a contrary interest in the case, their income and assets will not be aggregated with those of the applicant. It is, therefore, possible that individuals with such cases living within benefit units that are not eligible as a whole may nevertheless qualify on the basis of their independent resources only. The current analysis, in counting benefit unit resources may, therefore, *underestimate* eligibility in such cases. However, while the actual numbers of people eligible may be underestimated, the same effect will be apparent in both years and therefore a relative comparison between the periods covered in the research is valid<sup>3</sup>.
30. A similar issue arises in relation to children. Children are able to apply for legal aid and indeed do so in small but increasing numbers. It is also possible for parents to apply for legal aid on behalf of their children. Where legal aid is sought by or on behalf of a child, only the child's independent resources will be considered i.e. the resources of the child's parents or guardians will not be taken into account. Thus, as with spouses or cohabitees, there may be children who are eligible as individuals despite living in benefit units that are not, as a whole, eligible for legal aid. Indeed, one would expect most children to be in this position. Eligibility figures based on benefit units will, therefore, underestimate the extent of the eligible child population. They will also, however, include many young children who are perhaps less likely than the average eligible person to apply for, or need to apply for, legal aid.

## Key Findings

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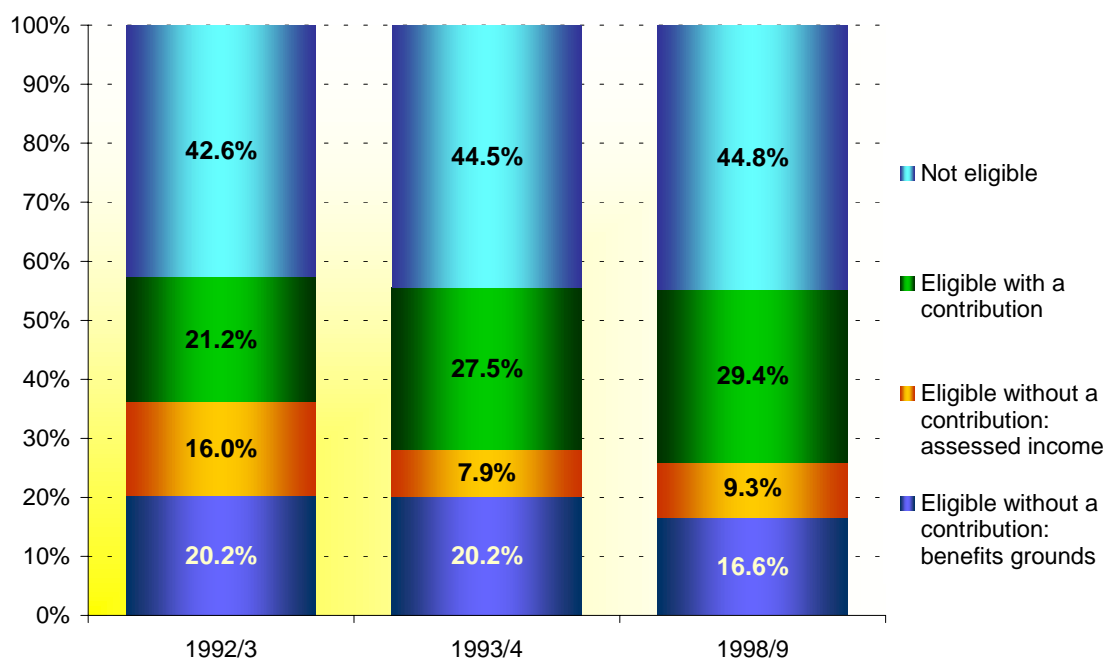
31. Figure C-1 below shows the impact on eligibility of changes since 1992/93. This includes not only changes to the legal aid means test but also changes within the population itself. Although the size of the population was virtually identical in 1992 and 1998, there were more subtle changes between the two years. For example, average earnings were higher in the latter year and receipt of certain benefits lower. As eligibility is determined by reference to such factors, these changes might also be expected to impact upon eligibility<sup>4</sup>.

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<sup>3</sup> The legal aid rules on aggregation of resources changed in 1996 to cover cohabitees as well as spouses. Although those with spouses or living alone will have been unaffected, the effect of the change will have been to make eligibility more restrictive where the applicant's cohabitee has some income or capital of their own. Where they have no such resources, they will qualify for a dependant's allowance, although this situation was unchanged by the 1996 changes.

<sup>4</sup> As the research used the 1993 population data to assess eligibility for both 1992/93 and 1993/94, any changes between these two years can only be the result of changes to the means test itself.

**Chart C-1: Eligibility for Civil Legal Aid**



32. The first two columns of the chart show eligibility in 1992/3 and 1993/4. A number of changes to the eligibility rules were made in 1993. As detailed in Appendix 2a, the lower income limit (below which no income contribution is payable) was reduced, as were various allowances made for dependants (the effect of which will have been to increase assessed disposable income for those with dependants). The chart shows that these changes had a number of immediate effects on eligibility:

- a reduction from 57.4% to 55.5% in the overall percentage of benefit units eligible for civil legal aid (reflected in the slight growth in the top section of the columns – those not eligible - from almost 43% to over 44%)
- an increase in the percentage of benefit units eligible with a contribution from 21.2% to 27.5% (as a result of some of those previously eligible for non-contributory legal aid becoming eligible with a contribution)
- a corresponding reduction from 36.2% to 28% in the percentage of benefit units eligible for non-contributory legal aid (a combination of the bottom two sections of the columns)
- within this reduction, no change to the proportion eligible without a contribution on the basis of receipt of particular benefits, with no further inquiry into their income or capital (as expected, as the rules for this did not change)
- a reduction from 16% to 7.8% in the number of people assessed as eligible on the basis of their disposable income and capital.

33. Thus the changes in 1993 made relatively little difference to overall eligibility, with the far larger shift being that from the non-contributory to contributory band.
34. Moving now to look at changes between 1993/94 and 1998/99 (the second and third columns in the chart), the analysis suggests that:
- total eligibility fell only very slightly further in the intervening years, from 55.5% to 55.3% of benefit units (the total of the three bottom sections of the columns)
  - there was a further small increase in the proportion eligible with a contribution, from 27.5% to 29.4%
  - there was a corresponding further reduction in the proportion without a contribution, from 28% to 25.9%
  - within this total, there was a reduction in the proportion eligible on the basis of their receipt of benefits from 20.2% to 16.6%

## **Impact of the changes on the size of the eligible population**

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35. In numerical terms, around 2.94 million people lived within eligible benefit units in 1992/93. The 2.1% reduction in overall eligibility between 1992/93 and 1998/99 resulted in just under 110,000 dropping out of eligibility. Of this total, just over 95,000 people were affected by the changes in 1993, with fewer than 15,000 more dropping out of eligibility over the subsequent five years.
36. At the other end of the scale, the chart shows a 3.6% decrease in the proportion of the population eligible on the basis of their receipt of benefits (the 'benefit based' population). Neither the 1993 changes nor any subsequent changes affected the scope of this eligibility. The observed change must, therefore, have been as a result of general social variations, such as a reduction in unemployment levels, that meant that fewer people were in receipt of qualifying benefits in the later year.
37. As people move from benefits into employment, the basis of their eligibility for legal aid changes in that their income and capital require to be assessed. However, various allowances are also made for dependants and for housing and employment costs. It is, therefore, possible for their gross income to increase but for their assessed disposable income to remain at a level that entitles them to legal aid without a contribution. The reduction in the benefit based population means that an additional 180,000 individuals would have income and capital to be assessed, rather than qualifying on the basis of the benefits they received.
38. However, this particular change occurred entirely between 1993/94 and 1998/99. Over the same period, there was actually a 1.4% increase in the proportion eligible without a contribution on the basis of their assessed disposable income and capital (the 'assessed non-contributory'

population). This equates to over 70,000 individuals and suggests that at least some of the 180,000 who moved from benefits into employment over this period may nevertheless have remained eligible without a contribution. However, the remaining 110,000 will now only be eligible with a contribution.

39. Perhaps of greater significance than either the overall change in eligibility or the move from benefit based to assessed non-contributory eligibility has been the shift in balance between the contributory and non-contributory populations. Over the period as a whole, non-contributory eligibility dropped from 36.2% to 25.9%. This means that around 530,000 of the 1.85 million people that were eligible without a contribution in 1992/93 became eligible only with a contribution. This means that over half of the eligible population is now in the contributory band: 53%, compared to 37% in 1992/93.
40. As with overall eligibility, the bulk of this change came in 1993 with the lowering of the lower income limit. This resulted in the overnight transfer of almost 420,000 people from the non-contributory to the contributory band. Since then, the limit has been updated annually in line with inflation. The further 2.2% reduction in non-contributory eligibility is, therefore, based largely on the extent to which applicant resources have increased ahead of inflation<sup>5</sup>. The result has been that a further 110,000 people have 'drifted' into the contributory band.

## Impact of the changes on applications

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41. When one compares the changes in eligibility shown in figure C-1 with the fall in applications over the same time period in Chart A-1, the impact of eligibility on the number of applications is far from clear. A 2.1% drop in total eligibility over a period of six years could not of itself be responsible for a reduction in applications that totals 33% over the same period.
42. It is logical to suggest that a smaller eligible population will submit fewer applications, but it is difficult to establish accurately how many fewer. An added complication is the changing balance of eligibility between the contributory and non-contributory bands: it cannot be assumed that people in one band are as likely to submit applications as people in the other.
43. One can, however, predict the effects of changes in eligibility by comparing the distribution of applicants and the eligible population as a whole both between contributory and non-contributory bands and from year to year. As we are trying to assess changes since 1992/93, that would be the ideal year to establish this distribution. However, as discussed in Section A, the number and profile of applications in 1992/93 and, consequently, 1993/94 were affected by applications being brought forward to avoid the revised eligibility rules. To take account of this effect and avoid skewing the assumptions to be used to assess the impact of the changes in eligibility, we have calculated 'normalised' values for both 1992/93 and 1993/94. This calculation is explained in Appendix 2b.
44. Using these figures we can estimate the reduction in applications arising as a result of the changes in eligibility, *all other things remaining equal*. The first thing to consider is the population that has moved out of legal aid altogether. As those affected would have been those towards the top end of the contributory band, the reduction of 110,000 over six years would

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<sup>5</sup> As appendix 2 shows, the lower capital limit has not been increased over this period. However, very few legal aid applicants are required to pay a contribution based on their capital. Thus the failure of this particular limit to keep pace with either inflation or earnings will have had only a marginal impact on eligibility without a contribution.

account for a maximum of around 650 applications per year (and probably less as those at the top end are less likely to apply in any event). Of these, the majority (of around 550) would have been lost following the 1993 changes, with fewer than 100 lost as a result of 'drift' over the subsequent five years. Thus the overall reduction in total eligibility seems unable to explain more than around 5% of the drop in applications between 1992/93 and 1998/99.

45. However, as noted above, the impact of the rather more radical shift from non-contributory to contributory eligibility seems likely to be more significant. Because the contributory population generates proportionately fewer applications than the non-contributory population, as people move from one band to the other, one would predict that they would become less likely to apply. However, it is important to note that the people affected by these changes *are* still eligible to apply, although some of them may choose not to. This choice will depend on a range of factors.
46. The 530,000 people who moved from the non-contributory to the contributory band might have been expected to generate around 7500 applications had they remained within the non-contributory band. However, as they moved into the contributory band (and became statistically less likely to apply), one might have expected them to generate closer to 3000 applications. The net effect of the move would, therefore, have been a reduction of around 4500 applications, with the bulk of this – 3500 or so – a direct result of the 1993 changes, with 1000 resulting from subsequent changes.
47. These figures refer to a *predicted* reduction in applications. It is clearly important to compare the predicted effect with the actual reduction in applications.
48. First of all, we will consider the immediate impact of the 1993 changes. The figures suggest that the response to the eligibility changes (in terms of deterring applications, rather than bringing their submission forwards) resulted in an immediate reduction in applications of around 2000. Of these, around 550 have already been identified as the impact of the reduction in overall eligibility. Of the remaining 1450, we are assuming that most were related to the shift from non-contributory to contributory eligibility, although some would no doubt be a result of other factors.
49. The number of applications in 1994/95 was a further 2500 lower than the normalised figure for 1993/94. A certain proportion of this may have been related to an improved understanding of the nature of the 1993 changes and their impact on clients<sup>6</sup>. However, the evidence from the two months prior to the changes being introduced suggests that applicants (or, more likely, their solicitors) were only too aware that changes were on the way and what they would mean. On this basis, it seems unlikely that the impact of the changes would be spread over a longer period of time: the likelihood that an observed effect is directly related to a particular cause must decrease the longer the gap between the two. Thus it seems likely that fairly substantial independent i.e. non-eligibility related effects were present. On this basis, we have assumed that no more than 1500 of the 2500 reduction between 1993/94 and 1994/95 can be attributed to the 1993 changes. If the full reduction of 1450 between 1992/93 and 1993/94 is attributed to the 1993 changes, combining the reductions in the two years would give a total of somewhere in the region of 2950 over two years.

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<sup>6</sup> For example, while the initial focus of concern may have been those who were expected to pay a contribution for the first time, the increase in the contribution made by the 1993 changes also appears likely to have discouraged applications from some of those who were already within the contributory band in 1992/93. There is no way of quantifying separately any consequent reduction in applications – although it will be subsumed within the observed reductions - but the issue is discussed further in Section D.

50. Turning to look at subsequent changes, it was noted above that the further shift from non-contributory into contributory eligibility i.e. in addition to the 1993 changes, had a predicted impact on applications of around 1000. However, the scale of the continuing reduction in applications from year to year despite only very slight further shifts in the numbers eligible suggests that the independent effects are undoubtedly growing.
51. The actual reduction seen between 1994/95 and 1998/99 was around 6700, of which around 100 would have been the result of some people drifting out of eligibility altogether. This suggests that a reduction of 5600 – around 20% of the applications received in 1994/95<sup>7</sup> - occurred for reasons *other than* the shifting balance of contributory and non-contributory eligibility. It is extremely unlikely that such strong independent effects would apply only to the population that has been unaffected by the eligibility changes. Applying the same proportion of 20% to the 1000 potential applicants who were moved into the contributory band suggests that up to 200 of these would not have applied for legal aid even had they remained entitled on the same basis. Thus a reduction in applications of around 800 between 1994/95 and 1998/99 can be attributed to the changes in the balance between contributory and non-contributory eligibility.
52. It is also important to note that the detailed findings of the eligibility research only cover the period up until 1998/99. There has been a further 12% - 2900 - reduction in applications since then. However, any change in eligibility will be of no more significant a nature than those between 1993/94 and 1998/99. The income limits have continued to be uprated in line with price inflation and so will have again have fallen slightly behind increases in resources within the population. However, allowances for children under the age of 11 were increased substantially in April 2000. This will to some extent counteract the 'drift' effect and indeed will have made a substantial difference to those directly affected.
53. Although detailed and updated family resources data are not available, it seems likely that the overall effect of the changes in the last three years will be proportionately less than the similar changes in the previous five years, especially if the independent effects continue to get stronger. Thus we might expect to see a further slight reduction in overall eligibility and a further slight shift towards contributory eligibility. However, this would again account for a fairly small proportion of the reduction in applications over the period. The eligibility changes between 1994/95 and 1998/99 accounted for around 13% of the total drop in applications over the period. If one assumes that the changes to the eligible population *since* 1998/99 have been less distinct, we can estimate that they will have been responsible for around 10% of the corresponding drop in applications. This means that the overall effect is likely to be something in the region of 300 applications.

## Summary

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54. The research suggests that there has been relatively little movement in the proportion of the population eligible for legal aid either as a result of or since the changes made in 1993. As it appears likely that the reduction in overall eligibility will have accounted for a reduction of at most 700 applicants per year, it does not appear that overall eligibility in itself can be a very strong explanatory factor for the large reduction in applications between 1992/93 and 2000/01.

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<sup>7</sup> Adjusted to take account of the 1000 affected by the subsequent changes in eligibility.

55. There has, however, been a significant shift in the distribution of those eligible between the non-contributory and contributory bands. The greatest shifts over the whole six year period covered by the research are those that resulted directly from the changes made in 1993. These shifts, as well as the increase in the proportion of disposable income required by way of a contribution, has had a greater impact on applications by those affected.
56. The impacts of both the 1993 and subsequent changes appear to have been less severe than might have been hypothesised. The reductions in applications that did take place were, therefore, a result of a combination of the eligibility changes and other factors. Thus while the predicted effect of the changes between 1992/93 and 1998/99 would account for 5,150<sup>8</sup> of the 11,000 (adjusted) reduction in applications seen – a total of 47% - the actual effect was lower. The figures outlined above suggest that a drop in applications of around 4400 can be attributed to the shift in balance between contributory and non-contributory eligibility between 1992/93 and 1998/99. This equates to 40% of the reduction over the six years.
57. The bulk of this reduction – 3500, or 80% - was seen in the two years directly after the 1993 policy changes and accounts for over three quarters of the total reduction over those two years. By contrast, a reduction of 900 between 1994/95 and 1998/99 - which was the result of applicants' resources increasing ahead of the index-linked eligibility limits, rather than any further specific change in policy – can explain only 13% of the total reduction over that period.
58. One must also consider the extent of changes to the eligible population and applications between 1998/99 and 2000/01. In total, changes to the eligible population since 1992/93 can account for around 30% of the reduction in applications. However, when one isolates the effect of the 1993 changes, one sees that changes in eligibility can account for only around 13% of the reduction in applications since 1994/95.
59. Thus the key findings are that the 1993 changes, principally by moving a large number of people into the contributory band, resulted in around 3500 fewer applications being received each year but that any subsequent 'drift' effect has resulted in a further reduction of only 1200 or so applications per year, with the effect being spread over six years.
60. This bears out the widely held belief that the changes in 1993 had a highly significant effect on applicants at that time. However, it does not support the widespread perception that there has been an almost equal decline since then as a result of the failure of eligibility to keep pace with applicants' resources.
61. These findings also mean that the great majority of the reduction of 9600 applications since 1994/95 has been a result of other factors, ostensibly unconnected to eligibility.
62. Finally, another of the key findings of this section is that more than half of the eligible population now falls into the contributory band. The evidence suggests strongly that those in this band are considerably less likely to apply for legal aid despite being eligible. Section D considers further whether this is becoming more problematic for those concerned.

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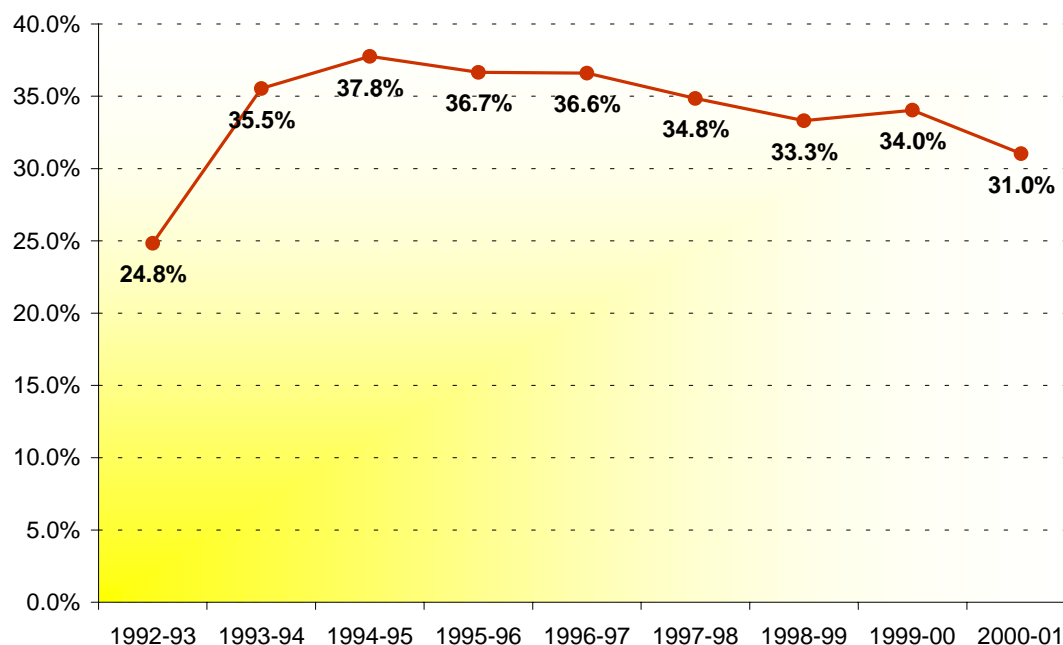
<sup>8</sup> 4500 as a result of the shift from non-contributory to contributory eligibility and 650 as a result of the move out of eligibility altogether.

## Section D: Contributions

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63. The analysis in the previous section strongly suggested that the main respect in which changes in eligibility can be said to have had an impact on applications is the greater emphasis placed on contributory eligibility. The analysis suggested that, based on predicted behaviours and observed changes, people eligible with a contribution were less likely to apply for legal aid. That analysis cannot, however, provide more detailed information about how the changes have affected individuals that do apply. This is considered below.
64. This is important, as the experience of those that do apply may help shape the perceptions of those that might be considering applying, or their solicitors. The main issue here is the extent to which applicants who are offered legal aid with a contribution then decline that offer. Not only might this act as a gauge on the difficulties faced by those that do apply, it might also be indicative of the extent to which other people will 'filter' themselves out of the system before even getting this far.
65. Chart D-1 shows that the changes in 1993 had a more immediate impact in this respect than in relation to applications. The proportion of people not accepting their offer increased dramatically. This is perhaps unsurprising, as at least some of those assessed with a contribution might have expected to be eligible without a contribution, while others will have been asked for significantly more by way of contribution than they might have previously expected or were prepared to pay.

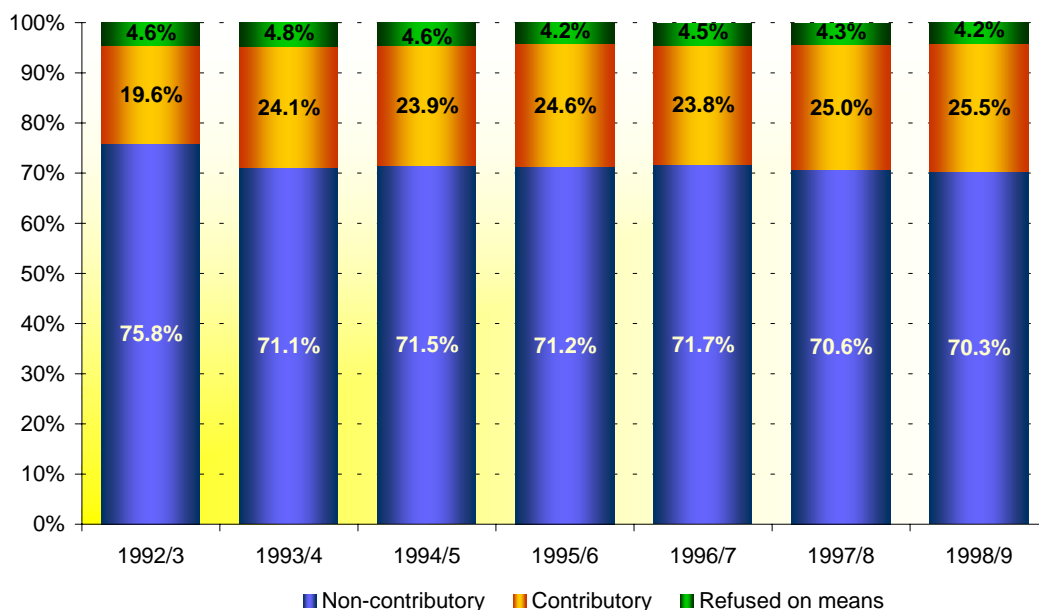
**Chart D-1: refusal after offer as % of offers**



66. If such a high and increased proportion of applicants turned down their offers following the 1993 changes, it is also to be expected that at least some of the reduction in applications will be due to people not applying because of the fear of being asked for a contribution, or higher contribution.

67. However, while the chart suggests that non-take-up of offers is indeed a problem, it also shows that it is in fact *reducing*: a higher proportion of applicants are now accepting their offers than at any time since the 1993 changes. This is particularly surprising as there has been a slight further shift towards contributory eligibility, but no reduction in the level of contribution required<sup>9</sup>. It is worth noting that the increase in take-up has been particularly marked since the contribution payment period was extended for applicants with contributions of over £500 in June 2000. The Board has proposed making this extended repayment period available to all applicants with a contribution in the hope that this will increase acceptance of offers further.
68. We saw in Section C that the scale of the overall reduction in applications compared to the changes in eligibility over the period suggests that those who remain eligible are becoming less likely to apply for a range of reasons unconnected to eligibility. However, it has been suggested that the size of the contribution payable is becoming increasingly problematic and so can itself account for at least some of the continuing reduction in applications, over and above any reduction caused by changes in eligibility. In other words, it has been suggested that the contributory population is becoming increasingly unlikely to apply.
69. Chart D-2 shows a breakdown of the eligibility status of applicants. This shows that there *was* an immediate change in the profile of applicants between 1992/93 and 1993/94, with a markedly higher proportion of applications coming from those who were eligible without a contribution in the second year. This is perhaps unsurprising given the nature and scale of the eligibility changes, which increased the size of the contributory population by almost 30%.

**Chart D-2: profile of applicants**



70. The chart also shows a further slight increase in the contributory population's share of applications since 1993/94 onwards. The proportion of the population eligible with a contribution grew by over 7% between 1993/94 and 1998/99, while that population's share of applications increased by just under 6%. This difference is not large and confirms that the

<sup>9</sup> The contribution has, since 1993, been calculated as one third of the applicant's disposable income between the upper and lower income limits. Prior to this the figure was one quarter. Although the average size of a contribution has gone up, this is a function of the income profile of those that apply and accept their offers, rather than any rule-based increase.

reduction in applications has occurred amongst both the non-contributory and contributory populations, suggesting factors unconnected with contributions. However, the drop in the contributory population's propensity to apply *has* been slightly more significant than that of the non-contributory population. In 1993/94, for example, the Board received 2.9 applications from the non-contributory population to every one from the contributory population. In 1998/99, that figure was 3.1. Again, this difference is relatively small. While this suggests that contributions certainly act as a disincentive to apply, it also means that this disincentive has become only slightly stronger since 1993/94 and can explain very little of the reduction in applications since that time.

71. Nevertheless, while the take-up of offers is improving and the disincentive effect of contributions remains broadly consistent, the Board remains concerned that contributions may pose too great a barrier to legal aid services for some people. To help us better understand the issue of contributions, the Board conducted a survey of applicants who have failed to take up an offer of legal aid with a contribution. The key findings of the survey are included here as Appendix 3. A large majority of those who returned the questionnaire said that they had refused their offer because they had been asked for too much money. Around a quarter said that their solicitor had told them that they could conduct the case for less. Just over one third had continued with their case by paying the solicitor privately. Of those whose cases had concluded, the majority had paid their solicitor less than the contribution which had been assessed by the Board, although a few had paid more.
72. The research also revealed that many applicants did not know they might be asked to pay a contribution at all. Of those that did, most felt they were asked for more than they expected. The research also revealed other gaps in information that might have had an impact on applicants' decisions to accept their offer.
73. The knowledge gaps amongst those that *do* apply for legal aid might imply that knowledge of legal aid in general and contributions in particular amongst the population as a whole is unlikely to be detailed. This might contribute to the difference between the expected reduction in applications detailed in Section C and that actually attributable to changes in eligibility and contributions.

## Summary

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74. The evidence of the last two sections suggests that while the extension of contributory eligibility is extremely significant in explaining the reduction in applications due to changes in eligibility, contributions themselves are not a major contributor to the recent fall in applications. Nevertheless, the Board is still concerned that more people fail to accept an offer of legal aid with a contribution than did so prior to the 1993 changes and has made proposals for minimising the difficulties experienced by applicants with a contribution. In so doing, it is also hoped that a knock on effect will be that some of those who do not apply for legal aid at present through fear of the contribution will be more inclined to do so.
75. However, it cannot necessarily be assumed that the apparent reduction in propensity to apply for legal aid means that in all cases people are not taking legal action when they need to. Rather, legal aid is one particular option and, depending on their solicitors' advice, the expected cost of their case and the likely size of their contribution, it is an option that some people appear less inclined to take than in the past.

76. The increase in the maximum contribution introduced in 1993 may also have particularly affected those who require work done in situations of special urgency. In such situations, the operation of the system often means that clients who are likely to be liable to pay a contribution will be required to pay a lump sum to their solicitor in advance. The Board has made proposals for minimising the impact of the contribution on such clients. Use of the special urgency provisions has become proportionately more prevalent over the period during which applications have fallen (although special urgency applications have also fallen this has been at a slower rate than civil legal aid applications overall). This might suggest that the difficulties caused by the interaction of the special urgency provisions and the contributions system may also have become proportionately more serious.

## Section E: The Supply Of Solicitors' Services

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77. It has been suggested that civil legal aid has become marginalised by solicitors because it is no longer profitable work. The suggestion is that this may have contributed to the decline in numbers of legal aid cases because it is harder for potential clients to access solicitors.
78. To examine this proposition, we have calculated the number of solicitors' outlets providing a civil legal aid and/or advice & assistance service over a number of years. This work forms part of a wider study to map the provision of solicitors services,. This wider project builds on an analysis carried out in 1993 by the Board with Professor Alan Paterson of Strathclyde University<sup>10</sup>. Both studies consider the number and distribution of legal aid outlets, that is a solicitor's office (including any branch office) that has submitted at least one civil legal aid application during the year in question. Clearly, outlets will be greater in number than firms, as many firms will have more than one branch.
79. The numbers submitting civil legal aid applications over the three years to 2000/1 are shown in Table E-1 below, along with the number of firms. The table also shows the numbers of outlets recorded during the earlier study (firms were not recorded in this study).

**Table E-1: Outlets Submitting at least one Civil Legal Aid Application**

	1991	1992	1998/9	1999/0	2000/1
Number of firms	N/a	N/a	803	798	775
Number of outlets	1,050	1,029	1,125	1,113	1,041

80. The figures demonstrate that the number of civil legal aid outlets has dropped by 7% over the most recent three years. However, even after this drop, the number remains around as high as at the start of the 1990s. Indeed, the data suggests that there are currently slightly *more* outlets offering a civil legal aid service than in 1992, the year that saw the highest number of applications on record. Given the recent fall, it is clear that at some point between 1992 and 1998/99 the number of outlets must have risen by almost 10%.
81. As a point of comparison, the number of outlets submitting civil advice & assistance intimations also appears to have risen somewhat since 1991, as Table E-2 below illustrates<sup>11</sup>.

**Table E-2: Outlets submitting at least one civil advice & assistance intimation.**

	1991	1992	1997/8	1998/9	1999/0
Number of outlets	1,043	1,049	1,385	1,379	1,338

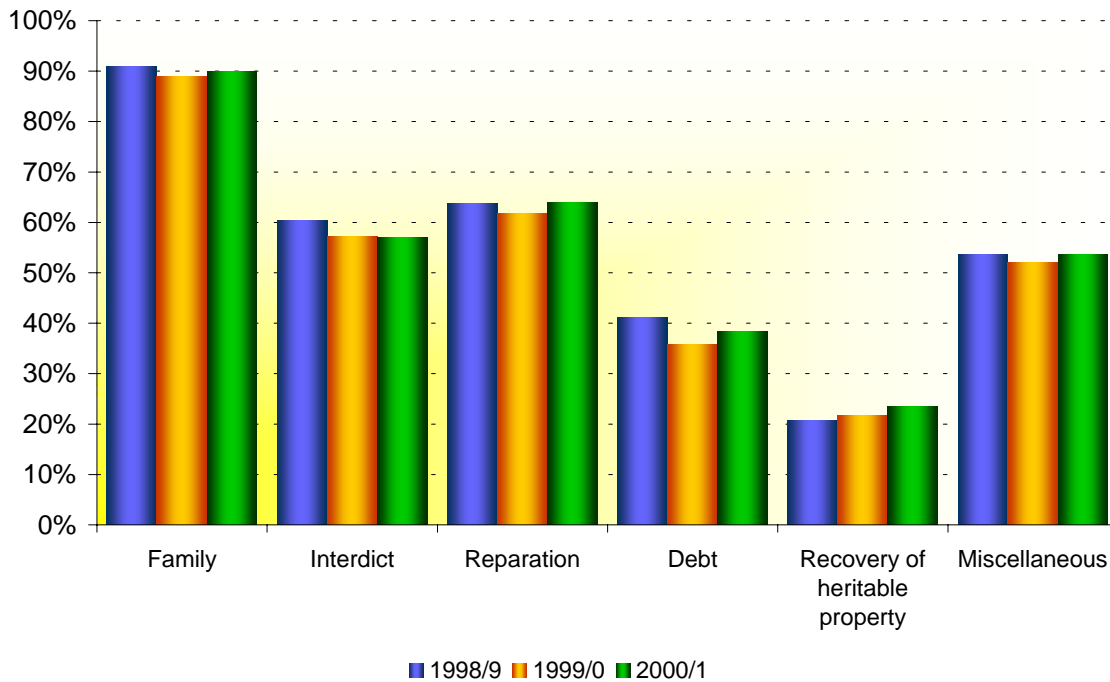
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<sup>10</sup> 'The Distribution of the Supply of Legal Aid in Scotland' 1994.

<sup>11</sup> The advice and assistance data for 1991 and 1992 is actually based on *all* advice and assistance, including that in relation to criminal matters. The increase between then and the later years is, therefore, likely to be even more marked than the table would suggest.

82. The evidence does not support the proposition that the drop in civil legal aid applications is due to lack of availability of outlets. Indeed, there appears to be as large a network of outlets as there has ever been. However, the recent trend may be a cause for concern and it will be important to continually monitor the number of outlets offering a civil legal aid service. It is also possible that there may have been shifts in relation to particular types of work that are being taken on by these outlets. Chart E-1 below assesses this in terms of the percentage of outlets offering services in particular types of case (the numbers relating to this are provided in Table 1 Appendix 4).

**Chart E-1: changes in outlets by subject area**



83. The chart shows that the proportion of outlets submitting applications in relation to family, debt and interdict cases has fallen, particularly in the case of interdict, since family cases fell by less than 1% and debt cases recovered slightly in 2000/1. The proportion of outlets submitting applications relating to recovery of heritable property and reparation rose during the three years, whilst the percentage of outlets submitting miscellaneous cases was unchanged. Unfortunately we do not have the data to allow us to make a comparison to the situation in 1991 and 1992. In any case, it should be remembered that, in many of these situations, we are seeing relatively small changes both in proportional and absolute terms; the figures are therefore highly susceptible to minor annual variations.

84. The report on civil legal aid in 1991 and 1992 showed (page 22) that, at that time, there was a considerable concentration of civil legal aid work, suggesting some specialisation. At the beginning of the 1990s, 20% of outlets submitting legal aid applications accounted for 60% of the applications submitted. This position is virtually unchanged today: the largest 20% of outlets are still responsible for 58% of applications. There is naturally some movement within this, for example outlets move into and out of the 'top five' and the biggest outlets *do* appear to be undertaking fewer cases. However, this is unsurprising given the fall in numbers of applications: as already noted, the concentration of work is broadly unchanged.

85. It is also worth stressing that these busy outlets are very much the exception rather than the norm. In 2000/1 only 90 outlets submitted more one application per week on average, with only 17 (1.6%) submitting more than 100 in the year. At the other end of the scale, 106 (10.0%) outlets submitted only one application that year, compared to only 88 (8.6%) in 1992. A further 78 outlets submitted two applications per year (1992 figure not available). The median number of applications submitted was 12, while the arithmetic mean was somewhat higher at 20. The mean average is higher because of the very high numbers of applications submitted by just a few firms, which have tended to inflate the mean. It is clear that individual firms are likely differ considerably in their use of legal aid, the standard deviation of 28.7 on the mean only confirms that there is a high degree of variance amongst individual firms.
86. These figures suggest that there are still a great many outlets operating as mixed practices that deal largely with private clients but are willing to use legal aid where necessary for the occasional client. There is also some evidence that clients may be being directed from solicitors from civil legal aid to have work carried out privately. Whether these outlets submit any applications at all will vary from year to year depending on the number of such 'occasional' legal aid clients who happen to approach them. Alongside these outlets operates a relatively small but stable number of more specialist outlets undertaking a substantial amount of civil legal aid work.
87. Thus despite the falling number of applications, the number of outlets overall is still broadly in line with that in 1992, as is the general distribution of work amongst these outlets. Of course, what this analysis cannot tell us is whether there have been more subtle changes within the firms providing a civil legal aid service. For example, it has been suggested that legal aid work has become less profitable as a result of stagnation in fee levels<sup>12</sup> and that as a direct result, the work tends to be done by more junior members of staff who have a lower charging out rate. It should however be pointed out that a large number of solicitors operate as sole practitioners, or in outlets with a small number of qualified staff. The opportunities for delegation may be less widespread in such firms. In any case, the present research cannot address the 'juniorisation' theory, although it does carry some logic. Similarly, the economic reality may be that, as civil legal aid rates fail to keep pace with increases in private rates, solicitors may feel less able to take on legal aid clients.

## Summary

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88. In 2000/1 the provision of legal aid (based on numbers of outlets undertaking legal aid work) appears to be broadly similar to that at the start of the previous decade. This means that the drop in civil legal aid applications cannot be solely due to lack of provision. However, it is important to recognise that the continued involvement in legal aid of a large number of outlets does not mean that the pattern of provision remains unchanged. Accordingly, the Board is undertaking further work to assess the geographic distribution of outlets. That analysis seems unlikely to contribute a great deal to the investigation of the fall in civil legal aid applications. However, the Board will also give further consideration to further work to look more closely at the recent downward trend and consider in more detail the issues mentioned above.

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<sup>12</sup> Fees for civil legal aid have remained essentially unchanged since 1992. A slight increase was made in 1995, but this was largely to compensate for other changes to items chargeable by solicitors. The effective fee rate will therefore have reduced as costs increase and rates remain stagnant.

# Section F: Changes In Legal Aid And Board Policy

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## Changes in scope

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89. Having considered changes to eligibility and changes to the availability of legal aid services, it is perhaps pertinent to question whether there have been any other changes within the legal aid system that may have contributed to the fall in applications. Accordingly, this section looks at changes both to the legal aid legislation and to the Board's approach to the administration of the system.
90. There have in fact been few major changes to civil legal aid since 1992/93. There have been two minor changes that will have been directly responsible for reducing the number of applications in particular fields. The first of these relates to mental health appeals, the second to proceedings for the restoration of driving licences. Actions in both of these areas were previously dealt with under civil legal aid, but have since been taken out of the civil legal aid scheme, with assistance by way of representation being made available as an alternative. The impact of these changes has, however, been minor. The two categories accounted for a total of only 261 and 292 applications in 1992/93 and 1993/94 respectively. The removal of civil legal aid from these cases may therefore have accounted for around 14% of the 1,907 reduction in applications between 1993/94 and 1994/95, but this figure pales into insignificance in the context of a total reduction since 1993/94 of over 12,000 applications.

## Changes in the grant rate

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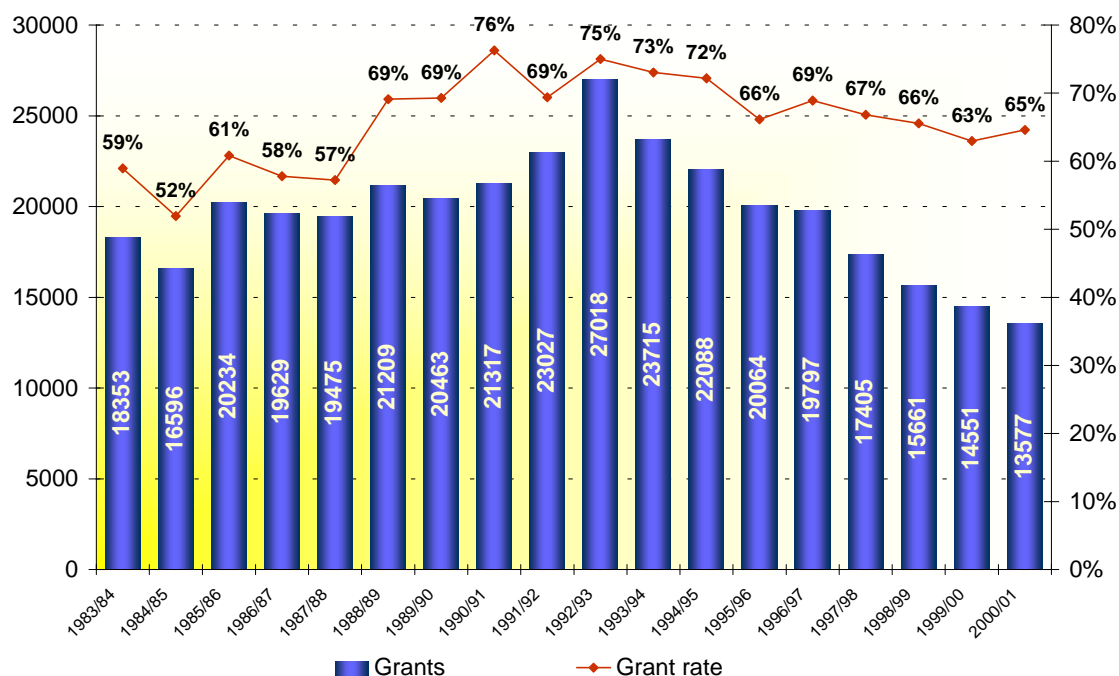
91. It is sometimes argued that people are unwilling to apply for legal aid because it is so hard to get. While this may to some extent be true, for it to explain the drop in applications it would have to be shown that legal aid was becoming harder to get. We have already shown that financial eligibility fell in 1993, but has remained relatively stable since. It does not therefore appear that this can explain the drop in applications. However, legal aid may also have become harder to access as a result of changes in Board policy on refusing legal aid 'on the merits'.
92. Chart F-1 below shows the variation in the grant rate from year to year<sup>13</sup>, revealing that the peak in 1992/93 is even more pronounced in this view than in relation to applications, with the low grant rate in the 1980s countering the impact of the high number of applications received during that period. The first point to note is that the grant rate has been lower in the last few years than during the early to mid 1990s. This has meant that the number of grants of legal aid has fallen even faster and more markedly than applications (as shown in Chart 1 above). However, while one might theorise that lower grant rates might discourage applications, the evidence does not appear to bear this out. While the current fall in applications has, by and

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<sup>13</sup> Calculated as the number of grants made divided by the number of applications received in any one year. This is not a foolproof way of calculating grant rates, as an application received in one year may not be determined until the next. Where there are significant year on year reductions or increases in the number of applications, or considerable changes in the time taken to reach decisions – perhaps as a result of changes in systems, procedures or staff resources – the grant rate may be artificially inflated or deflated.

large, coincided with a reduction in grant rates, the fall between 1987 and 1991 happened at a time when grant rates were rising. In addition, the large drop in applications from 1992 to 1993 came after one of the highest grant rates on record.

**Chart F-1: civil grants and grant rate**



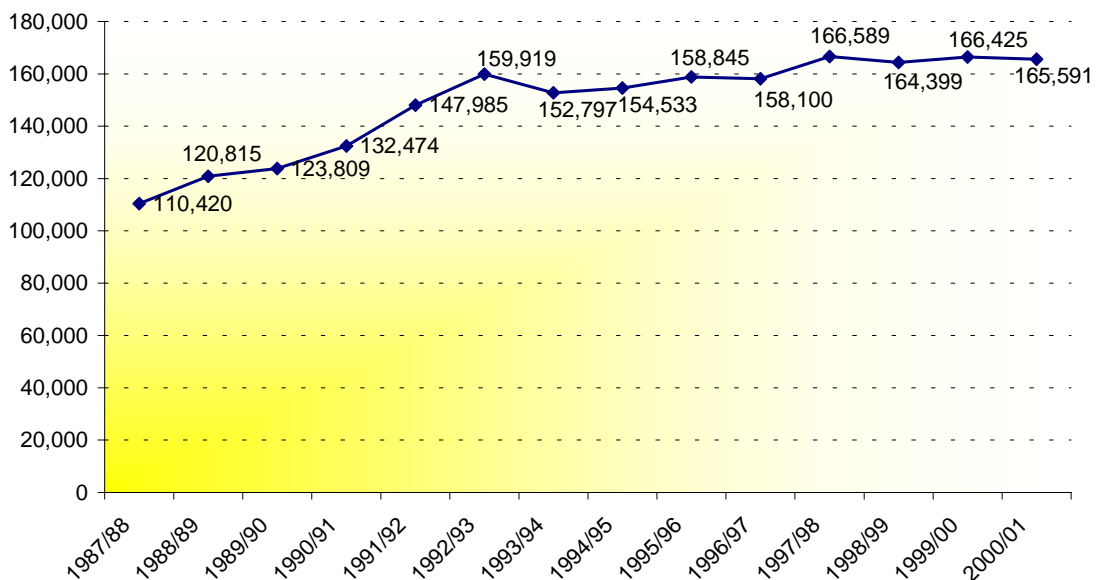
93. It is also interesting to observe that grant rates are actually higher now than in the last few years of the Law Society’s administration of legal aid. The average for the six years to 1988/89 was just 59%, compared to 66% for the last six years and 72% for the six years in the middle. Thus applications were higher than today and rising at a time when grant rates were very much lower (at one point dipping to just 52%).
94. However, there have been substantial changes in the legal aid system since that time, so a direct comparison is not altogether appropriate. For example, the figures quoted by the Society in their annual reports on the operation of the scheme include grants made on either a full or emergency basis. Of the cases in which legal aid was not granted at first instance, as many, if not more, were refused on the merits and therefore were abandoned before an offer of legal aid could be made.
95. In some respects, it is not surprising that the link between grant rates and numbers of applications is at best tenuous. Although there has been no research to establish the fact of the matter, it appears unlikely that awareness of legal aid amongst the public is high. It is even more improbable that the grant rates for legal aid, or any change to them, will be well known. On this basis, it is unlikely that a member of the public faced with a possible legal problem will decide not to approach a solicitor on the basis that they think it unlikely that legal aid will be granted for a case such as theirs. It appears far more likely that the client will either decide not to approach a solicitor for some other reason, unconnected with legal aid, or will approach the solicitor to explore the possibilities. It will only be at this stage that the client is likely to be told about legal aid and their chances of success. Thus solicitors will have a far more pronounced effect on their clients’ perceptions of legal aid than anything else.

96. Of course, some clients will have used legal aid before and will be broadly aware of their entitlement. It is possible that, if they have previously applied for and been refused legal aid, they may think twice before going to a solicitor again. However, this situation appears less likely than that set out above and is unlikely to apply to a sizeable proportion of applicants for civil legal aid. Thus both the evidence so far and logic suggest that reducing grant rates are unlikely to have had a direct effect on the volume of applications.

## Encouragement to use advice and assistance

97. Another possible reason for the reduction is that more cases may be resolving prior to court proceedings being raised. As Chart F-2 below illustrates, the number of intimations of civil advice & assistance received by the Board has plateaued at around 160,000 annually, in sharp contrast to the fall in civil legal aid applications. The use of advice & assistance will be discussed further below with specific reference to family cases. However, it is worth setting out here the potential impact that a change in approach to the use of advice and assistance may have had.

Chart F-2: Use of civil advice & assistance



98. A solicitor is limited in the amount of work they can carry out under advice and assistance by a system of authorised expenditure. When the solicitor is close to reaching the limit, or is clear that more work will be required than can be carried out within the existing limit, s/he will apply to the Board for an increase in authorised expenditure. When applying to the Board, the solicitor will set out the steps that have been taken to date and the steps it is proposed that the solicitor now takes. The Board's decision on whether to allow an increase will depend on the information supplied.

99. Increases can be granted for a wide range of reasons, although by far the most common is so that the solicitor can provide further advice or undertake further negotiations. Logic suggests that the more solicitors are able to negotiate under advice and assistance, the more likely a case is to settle, thereby negating the need for civil legal aid in the case. It is interesting to note that in 1992/93, increases were granted on average in relation to 46% of civil advice and assistance

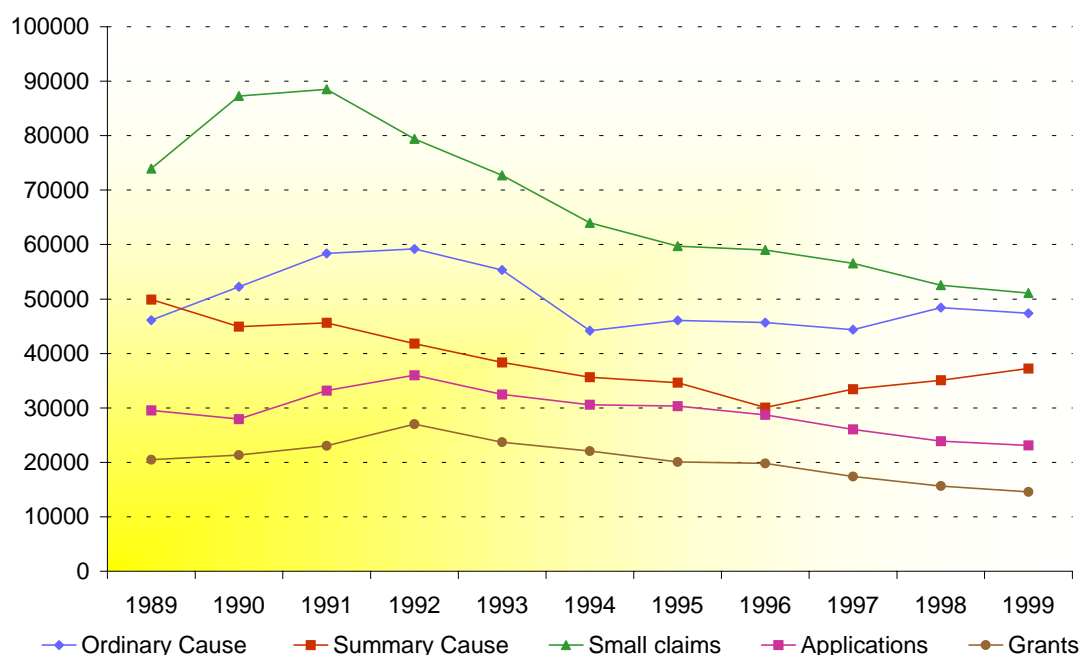
cases. Although the number fell a little in the three years after, by 2000/01 the figure had risen to 52%. This may suggest that solicitors are indeed seeking to carry out more work under advice and assistance, rather than moving to civil legal aid.

100. While it might generally be regarded as a good thing to resolve cases through negotiation rather than launching into potentially lengthy and arduous court proceedings, there are other, system related, reasons for solicitors to increasingly focus on what can be achieved under advice and assistance.
101. The treatment of property recovered and preserved varies between advice and assistance and civil legal aid. The list of exemptions to the general rule that the cost of a case is met out of any property recovered or preserved is more extensive under advice and assistance than it is under civil legal aid. In addition, the advice and assistance regulations include provision for disapplying the recovery rules where they would cause grave hardship or distress to the client: there is no equivalent provision in civil legal aid.
102. In addition, the means tests for advice and assistance and civil legal aid differ in their treatment of working families tax credit (and family credit before it). While it is treated as an income *passport* to advice and assistance, it is counted as income to be assessed for civil legal aid. Thus it is possible for someone to qualify for advice and assistance without a contribution but to have a large contribution for civil legal aid. For a client in this situation, it may be better to seek to resolve matters under advice and assistance than to proceed to civil legal aid.
103. Although the means tests have not changed, there have been changes in the scope of WFTC. This is wider than family credit, which means that *more* people will now qualify for advice and assistance automatically (they may previously have qualified on income grounds, but equally may have earned more than the limits). However, the extra income they receive may make them liable for a contribution, or a higher contribution, under civil legal aid. Although this change is fairly recent (and therefore cannot explain the trend over a longer period), it may have given added reason to resolve matters under advice and assistance in some cases.

## Section G: External Factors

104. The previous section suggested that solicitors may be using advice and assistance to take a different approach to cases, more focused on negotiation than adversarialism. There is additional evidence to suggest that this may be particularly relevant to family cases, which form such a large part of civil legal aid.
105. Chart G-1 below shows changes in numbers of legal aid and court actions from 1989 to 1999. There is a clear downward trend in most of this data, although this appears to have been reversed in summary cause in the last three years. Numbers of ordinary cause cases have also levelled out in the last five years and here too have turned around in the past couple of years. Summary cause figures are still considerably lower than in the three years from 1989. Ordinary cause figures are broadly similar to 1989. However, there was a considerable temporary increase here in the early 1990s. This peak matches that seen in relation to legal aid applications and grants. However, the trends have diverged over the last few years, civil legal aid continuing to drop while court usage has levelled off and then increased.

**Chart G-1: civil court usage and legal aid applications and grants**

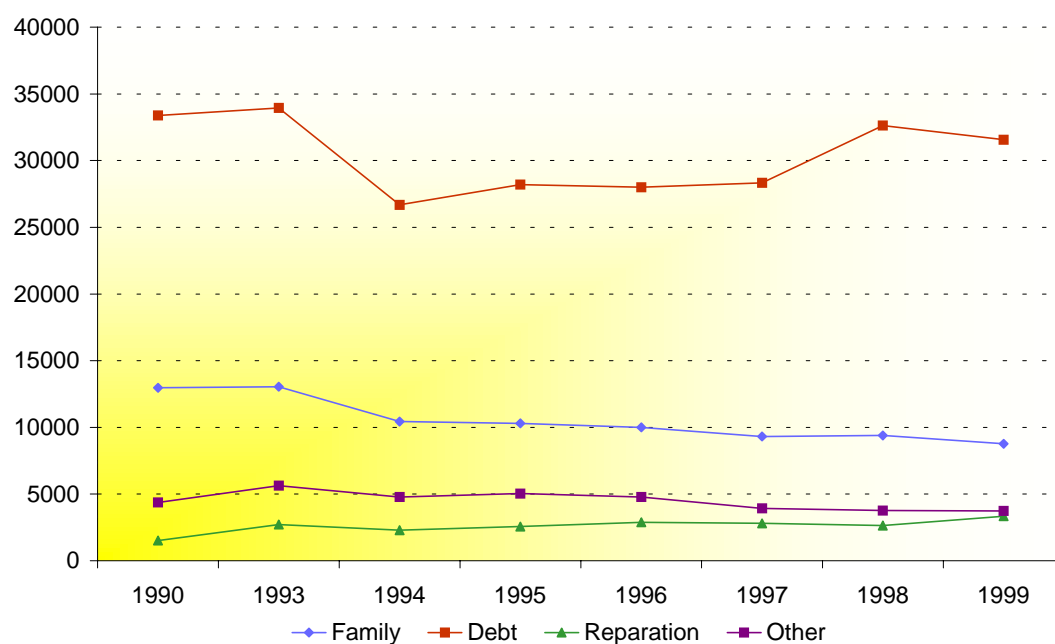


106. The dip in ordinary cause actions occurred at around the same time as that in legal aid. This coincides with both the legal aid eligibility changes of 1993 and the introduction of increased court fees: either one or both of these changes might explain the fall in ordinary cause actions. However, it is not likely that the changes in court fees would affect the number of people applying for legal aid, as these fees would be paid out of the fund were legal aid to be granted.
107. The more recent increases in summary and ordinary cause cases in the courts appears to have occurred completely independently of any changes in legal aid eligibility. The fact that such a rise in court business has occurred without any change to legal aid would appear to weaken the argument that a change in legal aid could have caused the previous changes in the volume of

business in the courts. It is also perhaps worth noting that the biggest drop in the courts has occurred in small claims, for which legal aid is not, and has never been, available. This drop may instead have been caused by the fact that the limit of £750 for small claims actions has not been updated: inflation might take many actions above this level, therefore taking them out of the small claims system. However, there is little evidence for them having moved up into summary cause, or for that matter for summary cause cases moving up into ordinary cause.

108. In summary, this analysis suggests that, rather than legal aid eligibility having forced a reduction in the level of business in the courts, the reduction in applications for legal aid is a function of the general reduction in business in the courts. However, the last few years have seen an increase in court business, which has not been matched by legal aid applications. As with the detailed analysis of civil legal aid applications in section B, it is necessary to look beyond the headline figures to consider if more subtle changes may have taken place.
109. A more detailed examination of the ordinary cause figures shows a very large difference in the breakdown of this business compared to applications received by the Board.

**Chart G-2: ordinary cause actions by subject matter**



110. As Figure G-2 above illustrates, by far the largest category of actions in the courts is debt, but this is the Board's smallest single category. As the ratio of debt actions in the courts to applications for legal aid is something in the region of 30:1 and the majority of debt actions (including actions for payment and recovery of heritable property) are undefended, the effect of changes in legal aid on debt actions in general is unlikely to be great. The volume of legal aid applications in the debt categories *has* gone down (defenders of actions for recovery of heritable property excepted), but this seems to be completely independent of trends in the courts and vice versa.

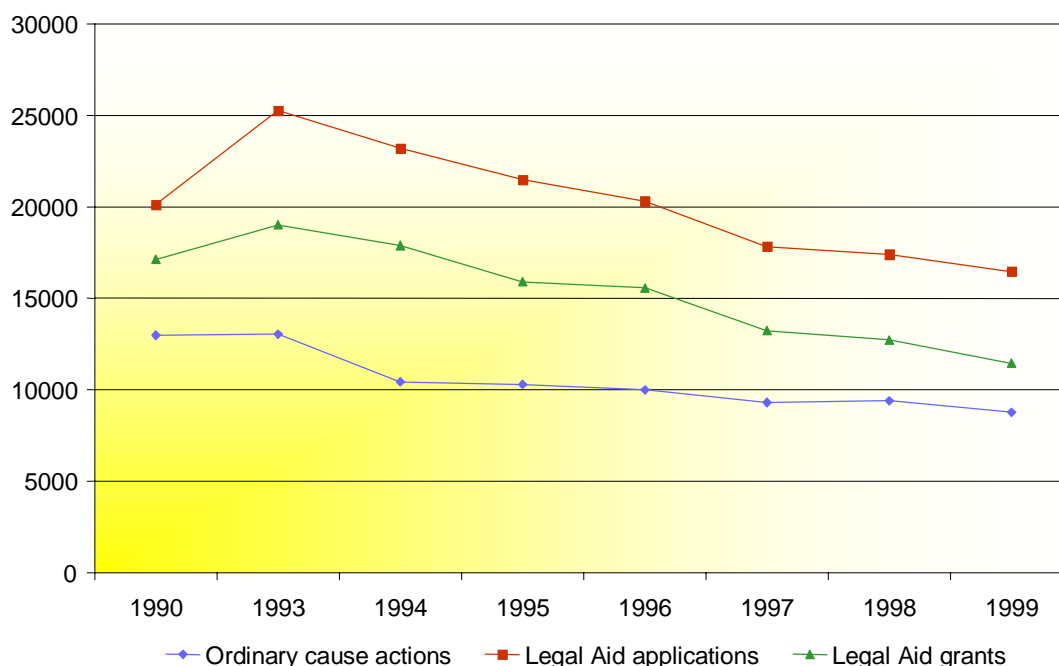
111. Because of the overbearing effect of debt actions on the court figures (in general over 60%) and the extent of the disjunction between the court and legal aid figures in this category, it is likely that Chart G-2 will underestimate any link between the volumes of legal aid applications and/or

grants and the levels of activity in the courts. Charts G-3 and G-4 below, therefore, show a comparison of court actions and legal aid applications and grants in those subject areas to which more substantial volumes of legal aid applications relate: family and reparation.

## Family actions

112. Chart G-3 below shows that the Board receives roughly twice as many family applications as there are ordinary cause actions. Even when refusals are taken into account, there are still considerably more grants than actions. There are a number of reasons for this.

**Chart G-3: family actions and legal aid applications etc**



113. Firstly, there are differences between how the Board and the courts classify cases. The most important of these is that the legal aid figures include interdicts under the family heading, while the courts do not. The courts have only recorded interdict as a category in its own right since 1994. In the most recent year, there were almost 2000 interdict actions initiated in the courts. If these were to be added to the family figures, the total would not be much less than the total number of grants of legal aid in the family category.

114. Secondly, there will be cases in which the Board grants legal aid to both parties to a family action. Finally, the legal aid figures in the chart also include Court of Session and summary cause actions, although relatively few family actions are brought in the Court of Session and very few indeed under summary cause.

115. Nevertheless, it is clear that legal aid is a very important source of finance for family actions. Given this context, any change in legal aid should be viewed as being extremely relevant for family actions in the courts. Both legal aid applications and the number of actions in the courts have dropped since 1993. However, the number of applications has dropped rather faster than the number of actions. Thus although the ratio of grants to actions in 1999 was almost exactly the same as in 1990, the 1999 figure was lower than at any time from 1993 to 1998. This

suggests that, while clearly still hugely important, legal aid has become a slightly *less* important source of funding for family cases.

116. The declining grant to action ratio supports the contention made in section D (Contributions) that at least some of those who are turning down an offer of legal aid are continuing with their action regardless, for example paying their solicitor privately. In addition, the general decline in family actions in the courts tallies with the suggestion made in section F above that there may have been a move to resolving many family matters without recourse to the courts.
117. This latter point is worthy of further exploration. The impact of the eligibility differences between advice and assistance and civil legal aid was considered in Section F. Although in many respects the impetus to resolve matters under advice and assistance may flow from the structure of the system, the resolution of matters this way should perhaps nevertheless be viewed as a positive development. It is also possible that a shift in approaches to the handling of cases has occurred more widely.
118. The Family Law Association, founded in 1989, developed a code of conduct for solicitors handling family disputes. The code suggests that solicitors should try to “advise, negotiate and conduct proceedings in a way that will encourage...a constructive settlement...as quickly as may be reasonable” whilst encouraging clients to see the advantages of a non-litigious approach as a way of resolving disputes.
119. As membership of the Association has grown and its approach has gained greater currency amongst members and non-members alike, it appears likely that this approach will have had an impact on the extent to which solicitors advise clients to litigate. This in turn will have had an impact on the number of court actions raised in relation to family disputes and the need for legal aid to fund such actions.
120. The biggest single reason for a reduction in family actions is the reduction in divorces. The total number of divorces in 2000 was 13% lower than in 1993. However, of perhaps even greater relevance, the number of ‘fault’ based divorces has, over the same period, fallen by 44%. Although there has been an increase in divorces based on five years separation (implying that some of those who might previously have pursued divorce on one of the fault grounds are now waiting for five years’ separation), the general trend is downward, particularly amongst what might have been expected to be the most contentious divorces. The increasing relative importance of divorces based on two years’ separation and consent might again indicate that more family disputes are likely to be resolved by way of settlement: consent based divorces are generally less likely to contain ancillary craves, as ancillary matters may already have been resolved, for example by way of a minute of agreement.
121. It is interesting in this regard to note that, while the volume of intimations of advice and assistance in the family field has fallen by a third over the period covered in this report (a smaller reduction than that seen in civil legal aid), the average cost of each family advice and assistance account has increased by over 50%, compared to an overall increase of 28% for all civil advice and assistance. This may indicate that more complex cases that are not easy to resolve are still being taken to the courts, whilst an increasingly significant number of cases may be resolved by some other means.
122. As a point of comparison, it is worth noting that the number of referrals to the Family Mediation Service in Scotland increased 74% between 1994/5 and 1999/0. Legal aid funding for mediation has also been available since 1995. Although the numbers of requests for funding have been fairly small, it is interesting to note that many of them have been concentrated in particular

localities. This suggests that certain solicitors or courts might particularly encourage the use of mediation.

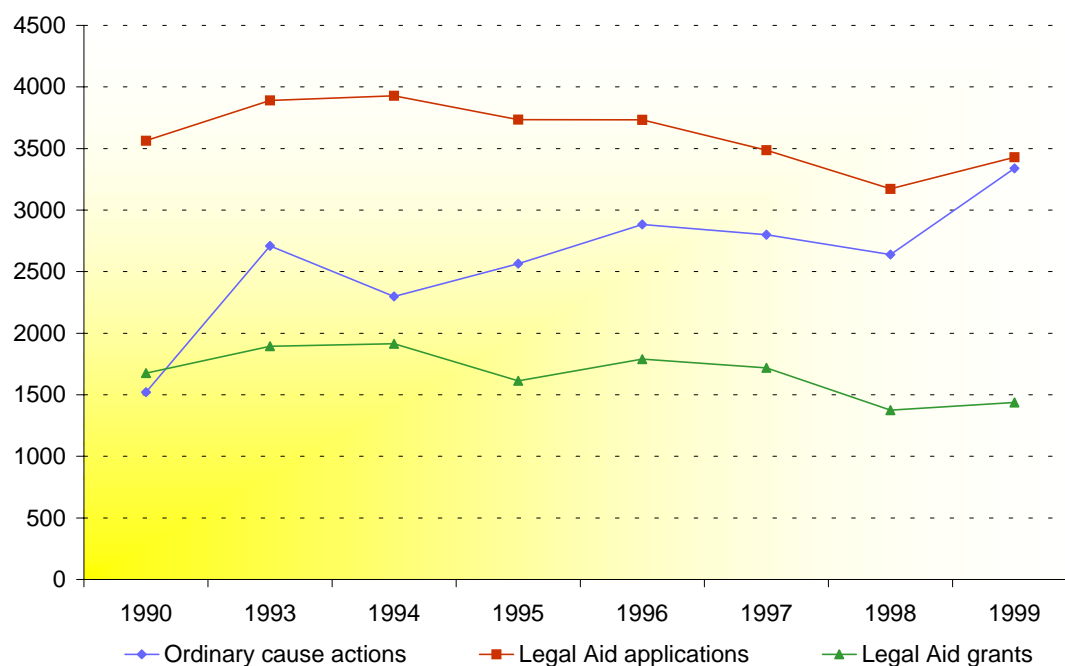
123. Moving to look at child related matters, the number of residence actions has also fallen considerably over the period, suggesting that, not only are fewer people divorcing, but that fewer people are using the courts to make arrangements for the care of their children. It is possible that many of these arrangements will still be made, but without recourse to the courts. This may in part be due to the introduction by the Children (Scotland) Act 1995 of a non-interventionist principal and an emphasis on shared parental responsibilities.
124. The most significant drop, in relative terms, has occurred in actions for aliment. Again, this reflects shifts elsewhere: the bulk of this drop happened between 1992/93 and 1993/94, applications precisely halving in the space of a year. This was a direct result of the introduction of the Child Support Act, including the formation of the Child Support Agency, which has meant that the courts no longer have jurisdiction in the vast majority of child related aliment claims.
125. At the same time as aliment and residence actions have dropped, there has been an increase in legal aid applications in relation to contact (contact is not separated from residence in the court figures, so no direct comparison is possible). It is interesting in this regard to note that, while there were 13% fewer births in Scotland in 2000 than in 1993, the proportion of children born to unmarried mothers increased over the same period from 31% to 43%.
126. To summarise, changes in the use of legal aid and the courts in family cases appear to be closely linked to changes in legislation, changes in the approach encouraged by solicitors and the courts and broader societal changes that have had an impact on the number of divorces.

## **Reparation actions**

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127. Chart G-4 below suggests a weaker relationship between the number of reparation actions in the courts and the use of legal aid for such cases. The number of actions in 1999 was higher than any of the years since 1993. However, the number of applications for and grants of legal aid have dropped considerably over the period (although not as quickly as in the family category). The ratio of court actions to grants of legal aid has declined over the period to the extent that there are now fewer than half as many grants of legal aid in these cases as there are court actions.

**Chart G-4: Reparation actions and legal aid applications etc**



128. There is less evidence in reparation that there has been a change in the approach taken to settlement/litigation. Indeed, there has been a more pronounced decrease in the use of advice and assistance than civil legal aid in such cases. It is also clear that, beyond legal aid, there has been an increase in reparation actions. Even in the past, legal aid appears to have been a less important source of funding for reparation actions than for family actions. This is perhaps unsurprising, given the availability of other sources of funding for reparation actions such as legal expenses insurance, trade unions and conditional fee arrangements. Further, legal aid appears to be becoming an even less significant source of funding. This appears likely to be a direct result of the increasing prevalence of conditional fee arrangements in general and those offered by claims companies in particular.

## Summary

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129. The analysis in this section suggests that the changes in the use of legal aid detailed in earlier chapters are likely to be a result of a range of factors. Some of these will relate to the legal aid system itself, but this section suggests that the legal aid changes in fact reflect changes elsewhere, rather than causing them. In particular, changes both in the numbers of and approaches to family cases, especially those involving separation and divorce (the largest legal aid categories), appear to have reduced the onus on court-related solutions and, consequently, civil legal aid.

## Section H: Conclusion

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130. There has been a significant drop in the volume of applications for civil legal aid between 1992/3 and 2000/01. Although 1992/93 was itself a somewhat atypical year, the fact remains that applications are currently at their lowest level in almost twenty years. This report has considered a range of potential explanatory factors for this change.
131. There are three particularly strong perceptions about civil legal aid amongst practitioners and observers alike. These are that civil legal aid is harder to access because
- the financial eligibility criteria are becoming increasingly restrictive
  - the level of contributions is an increasingly significant barrier
  - fewer solicitors are offering a legal aid service.
132. The analysis carried out by the Board suggests that none of these perceptions entirely match the reality. Firstly, the research commissioned by the Board confirms that changes introduced in 1993 had a relatively small impact on overall eligibility levels but significantly altered the balance between eligibility with and without a contribution. This in turn resulted in a substantial reduction in applications over the two years after the changes.
133. Contrary to widespread perceptions, the research also revealed that, since the explicit changes in 1993, there has been very little further reduction in overall eligibility and that there had been only a relatively small further move towards contributory eligibility. While around three quarters of the reduction in applications between 1992/93 and 1994/95 appear attributable to the 1993 changes, the impact of the subsequent changes has been far less significant in the context of the continuing fall in applications. Thus while changes in eligibility can certainly be viewed as a major causal factor in the initial fall in eligibility, they do relatively little to explain the further 9600 drop since 1994/95.
134. Secondly, the contributory population *is* less likely to generate applications than the non-contributory population but any increase in this differential has been slight. In other words, the continuing drop in applications has occurred only slightly disproportionately amongst the contributory compared to the non-contributory population. In addition, our analysis also suggests that the problem of non take-up of offers is in fact *reducing*: a higher proportion of applicants are now accepting their offers than at any time since the 1993 changes.
135. Thirdly, and turning to solicitors' outlets submitting applications for civil legal aid, our analysis shows that the number of outlets has dropped by 7% over the most recent three years, possibly due to the stagnation in fees for legal aid work. However, even after this drop, the number remains *broadly similar* to the years covered by an earlier Board study. Indeed, the data suggests that there are currently slightly *more* (1,041) outlets offering a civil legal aid service than in 1992 (1,029), the year that saw the highest number of applications on record.
136. As such, these three factors cannot adequately explain the continuing fall in applications. That is not to say that they may not have had some impact. Nor is it to say that these issues offer no cause for concern. For example, the more recent drop in civil legal aid outlets suggests a need

for further monitoring. However, what impact these factors may have had appears limited compared to the scale of the reduction in applications.

137. In seeking to explain the fall, it is therefore necessary to look elsewhere. When one studies the nature of applications for legal aid in more detail, one sees that the overall figures hide some potentially important distinctions which may themselves suggest other avenues for analysis. Firstly, although female pursuers still outweigh any other group, they do this far less so than previously. There are now proportionately more male pursuers, while the gender balance amongst defenders has also shifted, with female defenders now outweighing males, a significant reversal of the position in 1992/93.
138. Secondly, the types of matters for which legal aid is sought have fallen at different rates. Although the four big family areas – fault based divorce, separation based divorce, residence and contact – together still account for almost exactly the same proportion of applications, there have been shifts in the balance between these groups. Fault based divorce and residence have both fallen markedly, while contact has grown in significance both in absolute and relative terms. There has also been a particularly significant reduction in the number of actions for aliment, although the volume of such actions is, and always was, far less significant than the big four family actions. Beyond family actions, there has been a smaller than average reduction in reparation cases, but a 57% reduction in debt related applications.
139. This analysis suggests that legal aid is being used for different things, with particularly important shifts occurring in family law cases. When one compares what is happening within legal aid with what is happening in the courts and elsewhere, one sees that the reduction in applications relating to divorce tallies closely with the reduction in ‘fault based’ divorces in the courts. If fewer people are divorcing, fewer people will seek legal aid to divorce. Other changes, such as the introduction of the Child Support Agency and the Children (Scotland) Act 1995, will also have impacted on the need for court action in the family field.
140. The general suggestion is that fewer people are using the courts to make arrangements for the care and support of their children. Over the period there has been an increase in the proportion of civil advice and assistance cases involving an application for increase. Consequently, there has also been a rise in the average cost of intimations, particularly in the family field. This might suggest that more work is being done to resolve such issues under advice and assistance, perhaps by way of minute of agreement, without the need for recourse to the courts or, by logical extension, civil legal aid.
141. Looking to the courts, there was a particularly sharp drop in the number of ordinary actions between 1993 and 1994, including family actions. The drop was far more pronounced in the courts than it was in legal aid that year (20% compared to a drop in applications of 10% between 1992/93 and 1993/94 and 6% between 1993/94 and 1994/95 – legal aid figures are presented in financial years, as opposed to the calendar years used for court figures). Although other factors may have been present, it seems likely that this drop related to the large increases in court fees introduced during the year. Ordinary actions have never regained their previous volume.
142. Other than family matters, the major category for which legal aid is made available and which does feature heavily in the courts is reparation (covering personal injury as well as other damages actions and contract disputes). The numbers of such cases in the courts fell by less than other case types after 1993 and rose immediately thereafter. The total number has continued to increase and is now considerably higher than in earlier years. This is in contrast to the pattern in legal aid. It appears, therefore, that legal aid has become a less important means

of financing such cases. Alternative sources of funding appear to have gained increasing prominence over recent years, including legal expenses insurance and conditional fee arrangements, either through solicitors or through claims companies. It is likely that the market has continued to grow and so it is possible that some of those who may previously have applied for legal aid to advance such claims no longer do so.

## Conclusions

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143. There has been a relatively small overall decrease in eligibility over the period, and there has also been a more significant shift in balance between those receiving legal aid with and without payment of a contribution. However, the impact of these changes does not appear to be large enough to offer more than a partial explanation for the fall in applications and particularly the continuing fall from the mid-1990s onwards. There has been little if any reduction in the number of solicitor outlets providing a civil legal aid service. In fact, in recent years, it has been higher than at the peak of civil legal aid. However, there has been a dramatic fall in the number of divorces (and particularly fault based divorces) being granted by the courts, a large increase in the use made of mediation services and a rise in the availability of alternative sources of resolution for non-family cases. There has been no reduction in the use of advice and assistance for civil matters, although there has been some diversification, with more people seeking advice in relation to matters that have no prospect of resulting in court action. It also appears likely that solicitors are resolving more issues through advice and assistance, rather than resorting to court action in the first instance.
144. In short, on the basis of the evidence presented in this report, it appears that the principal reasons for the drop in volume of civil legal aid applications since 1992/93 have been changes in legislation, approaches to dispute resolution and societal/demographic changes. Changes within the legal aid system, such as eligibility and contributions, will certainly have contributed to the reduction, although the impact of changes in the supply of legal aid services is less clear. Taken together, their impact seems likely to be outweighed by other, external factors.
145. Nevertheless, the Board is concerned that certain aspects of the legal aid system may still make access harder than necessary for some clients. The Board has made proposals for changes to the operation of the special urgency provisions and the contributions system with the aim of making civil legal aid more accessible to the particular applicants - or potential applicants - affected by these parts of the system, as well as looking at ways of reducing the bureaucracy and complexity surrounding civil legal aid.
146. The findings of the research carried out for this report also suggests the need for some further work. The Board is already carrying out a more detailed analysis of the distribution of solicitor outlets. Although the overall picture perhaps suggests little cause for concern, we are keen to explore further possible variations between different parts of the country. In addition, the distribution of work within firms, particularly in light of the stagnation in fee levels, may also merit further examination.
147. Similarly, while eligibility has not been the strongest factor in the reduction in applications in recent years, we intend to extend the work already carried out to consider the interaction of the different eligibility rules for advice and assistance and civil legal aid. Such further research will help improve our understanding of other aspects of legal aid and help ensure that potential problem areas are identified before they can impact negatively on access to civil legal aid services.

# Appendices

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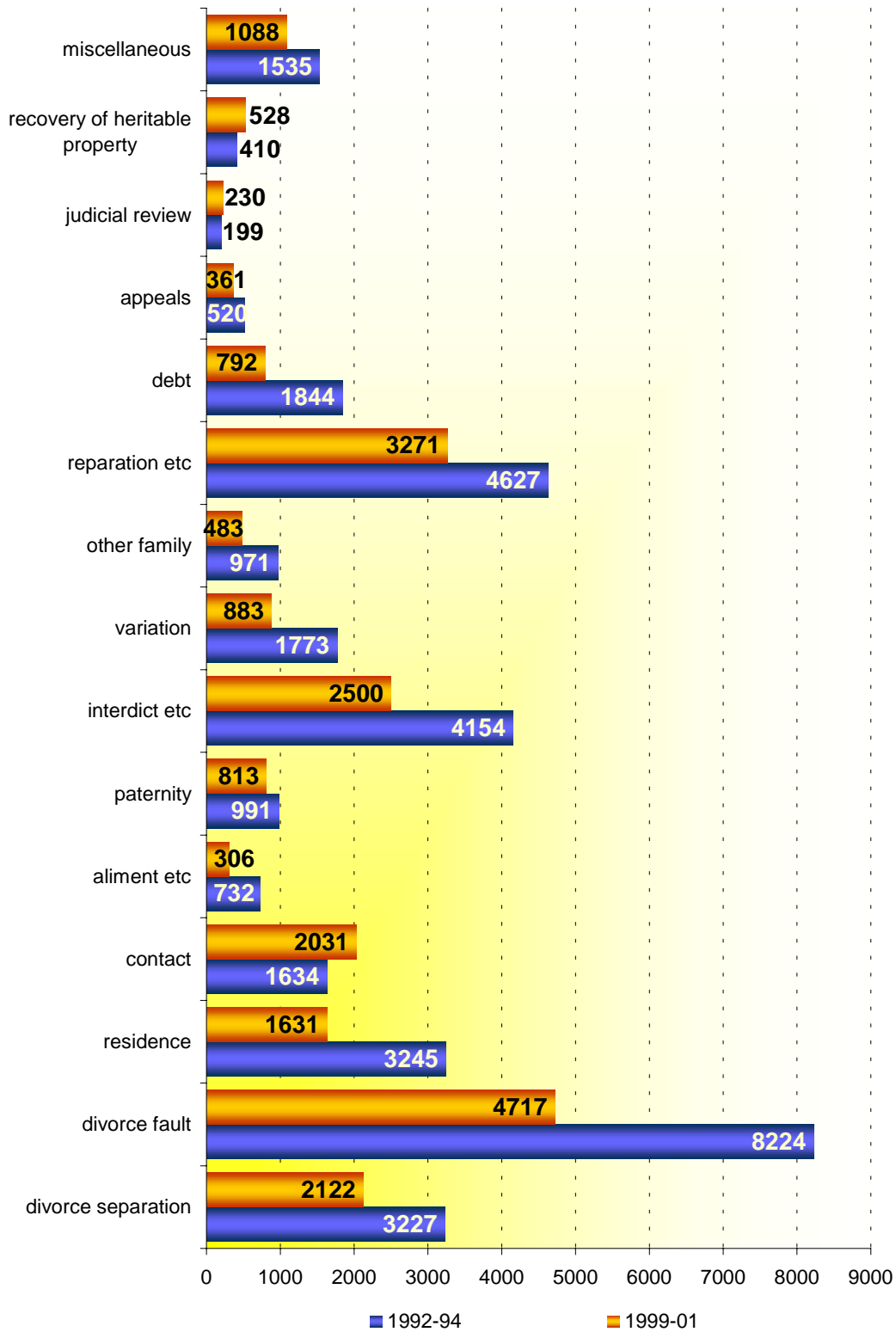
# APPENDIX 1: Applications for Civil Legal Aid 1992 – 2001

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Table 1: Top three case categories at start & end of period, by gender and instance.

	1992-94 average	1999-01 average
Female defenders	Contact (16.6%) Debt (13.6%) Residence (12.3%)	Contact (27.2%) Residence (13.4%) Recovery of heritable property (12.0%)
Male defenders	Divorce - fault (30.0%) Debt (16.0%) Interdict (13.3%)	Divorce - fault (29.4%) Interdict (17.1%) Debt (13.2%)
Female pursuers	Divorce – fault (32.8%) Interdict (15.0%) Divorce – separation (13.3%)	Divorce – fault (31.3%) Reparation etc (16.6%) Interdict (16.3%)
Male pursuers	Reparation (31.5%) Contact (10.6%) Divorce – fault (10.0%)	Reparation (27.9%) Contact (17.9%) Residence (9.3%)

**Chart B-5: change in use of civil legal aid**



## APPENDIX 2a: Legal Aid Eligibility Limits and Allowances

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**Table 1: Income and Capital Limits 1992/3 to 2000/1**

	Lower income	Upper income	Lower capital	Upper capital
6 April 1992 - 11 April 1993	£3,060	£6,800	£3,000	£6,750
12 April 1993 - 10 April 1994	£2,293	£6,800	£3,000	£6,750
11 April 1994 - 10 April 1995	£2,382	£7,060	£3,000	£6,750
11 April 1995 - 7 April 1996	£2,425	£7,920	£3,000	£6,750
8 April 1996 - 7 April 1997	£2,498	£8,158	£3,000	£8,560
8 April 1997 - 7 April 1998	£2,563	£8,370	£3,000	£8,560
8 April 1998 - 11 April 1999	£2,625	£8,571	£3,000	£8,560
12 April 1999 - 11 April 2000	£2,680	£8,751	£3,000	£8,560
12 April 2000 - 8 April 2001	£2,723	£8,891	£3,000	£8,560
9 April 2001 -	£2,767	£9,034	£3,000	£8,560

**Table 2: Dependency Allowances 1992/3 to 2000/1**

	Spouse	Child			
		under 11	11-15	16 - 17	18 +
6 April 1992 - 11 April 1993	£2,122	£948	£1,395	£1,665	£2,190
12 April 1993 - 10 April 1994	£1,304	£785	£1,155	£1,379	£1,815
11 April 1994 - 10 April 1995	£1,356	£816	£1,199	£1,434	£1,885
11 April 1995 - 7 April 1996	£1,384	£833	£1,222	£1,462	£1,921
8 April 1996 - 7 April 1997	£1,423	£858	£1,257	£1,504	£1,976
8 April 1997 - 7 April 1998	£1,460	£881	£1,291	£1,543	£2,028
8 April 1998 - 11 April 1999	£1,493	£902	£1,322	£1,580	£1,580
12 April 1999 - 11 April 2000	£1,525	£1,053	£1,351	£1,614	£1,614
12 April 2000 - 8 April 2001	£1,552	£1,614	£1,614	£1,656	£1,656
9 April 2001 -	£1,575	£1,640	£1,640	£1,682	£1,682

## APPENDIX 2b: 'Normalisation' of yearly totals

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1. It is particularly difficult to estimate the effect of the apparent rush to submit applications towards the end of 1992/93 in advance of the impending changes to eligibility. The implication of such a rush would be that the number of applications in 1992/93 was artificially boosted and that some of the applications received in that year would, in other circumstances, have been submitted in 1993/94.
2. The evidence for the rush to submit applications stems principally from the Board's month by month application figures. Over the three years from 1993/94 to 1995/96, the first ten months of the year have allowed prediction of the total volume of applications for the year to within an average of less than 1%. In 1992/93, however, the ten-month figures underestimated the volume of applications received by over 4%. This suggests that the Board received over 1000 applications more than would be expected in the last two months of 1992/93. Removing these cases from the 1992/93 total provides a 'normalised' application total of 35,018. The corollary of applications being brought forward into 1992/93 is that the number of applications in 1993/94 could itself be said to be artificially *deflated*.
3. However, it cannot be assumed that all of those who applied in 1992/93 to avoid the eligibility changes would otherwise have applied in 1993/94. Indeed, some of them would have been unable to do so as they would be ineligible altogether. However, this is a relatively small number. There would be another, more substantial group of people who would qualify for legal aid without a contribution if their application was submitted on time but would be faced with a potentially substantial contribution in 1993/94. Finally, there are those who would already have a contribution under the 1992/93 rules but whose contribution would increase significantly as a result of the changes (as a result of the combination of the reductions in the lower income limit and dependants' allowances and the increase of the share of disposable income to be paid as a contribution from a quarter to a third).
4. We have no way of knowing how many of these 1000 people would simply not have applied had they been unable to apply in time to avoid the 1993 changes. However, it seems reasonable to suggest that up to half of them would have been sufficiently disadvantaged for them to make no application.
5. The normalisation process, therefore, leads to a *reduction* in the 1992/93 applications figure to around 35,000 and an *increase* in the 1993/94 figure to around 33,000. The normalised reduction between the two years is, therefore, approximately 2000, rather than the 3500 suggested by the unadjusted figures.
6. While this provides a starting point for the calculations, the more detailed analysis of the impact of the shifts from the contributory and non-contributory population has to take account of the different rates of application from those two populations. Thus as well as normalising the overall applications figures, it is also necessary to normalise the distribution of those applications between bands.
7. The main incentives to bring forward an application would have applied to those within the 1992/93 assessed non-contributory band who stood to be moved into the contributory band for the first time and those within the 1992/93 contributory band who wanted either to stay within legal aid altogether or to minimise the contribution payable. In numeric terms, the former outweigh the latter by around 1.7 to 1. Applying that ratio to the 1000 or so applications

brought forward and deducting the result from the actual applications received allows one to calculate normalised values for the non-contributory and contributory populations required to generate an application in 1992/93. These values are 70 and 163 respectively. The 'raw' figures on applications received would have produced equivalent values of 68 and 154.

8. To calculate normalised values for 1993/94, one has to take account of the 500 'brought forward' applications that would not have materialised under the changed rules. Applying the same 1.7 to 1 ratio to this 500 and adding these totals to the 1993/94 figures produces values for the population required to generate an application of 61 (non-contributory) and 176 (contributory), compared to 'raw' values of 62 and 180.
9. The values for 1998/99 are easier to calculate, based simply on that year's figures for applications and eligible populations, with no normalisation required. The values are 79 and 247. This means that the propensity to apply dropped between 1993/94 and 1998/99 amongst both the contributory and non-contributory populations. In 1993/94, the non-contributory population was 2.9 times as likely to apply (176 divided by 61), while in 1998/99 the equivalent figure was 3.1 (247 divided by 79).

## APPENDIX 3: Contributions

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A postal survey of 380 applicants who had refused an offer of legal aid with a contribution was undertaken to try and identify reasons for refusing an offer and what had happened to the case subsequently. 119 completed questionnaires (31%) were received in time to be included in the analysis, their responses are described below.

### Reasons for Refusal

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- 88% of respondents refused after offer because they were asked for too much money.
- Roughly 25% had solicitors who thought they could do the work for less than the contribution.

### Inducements to accept the offer

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- 90% would have accepted if they had been asked for less money.
- More time to pay would have encouraged just under one-third of respondents to take up their offer.
- Knowing that some of their contribution might have been returned would have made a difference in around one quarter of all cases.

### Outcome

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- Just under 50% had done nothing about their original problem since refusing legal aid.
- Overall, 79 respondents (two-thirds) felt that their *problem* was not been solved at the time of filling in the questionnaire. This would include those whose cases were on-going and who were not satisfied with the outcome of their case.
- 34% had further work done on their case by a solicitor (including cases which did not go to court).
- Of the 21 respondents who had received a final bill from their solicitor, 4 ended up paying more than the contribution they were originally assessed with.

## Differences between respondents

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- Responses of males and females were similar in all but one instance. Where respondents considered they would have accepted legal aid if they had had longer to pay, females were more likely than males to specify a longer time period.
- Solicitors are more likely to think they can undertake the case for less money, and to take the case to court, when family law is involved.

## APPENDIX 4: Solicitors' Services

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Table 1: Number and percentage of outlets submitting Civil Applications by Case Type

	1998/9		1999/0		2000/1	
	Number	%	Number	%	Number	%
Family	1022	90.8%	991	89.0%	950	90.0%
Interdict	679	60.4%	638	57.3%	602	57.1%
Reparation	717	63.7%	688	61.8%	676	64.1%
Debt	463	41.2%	399	35.8%	406	38.5%
Recovery of heritable property	234	20.8%	241	21.7%	248	23.5%
Miscellaneous	603	53.6%	580	52.1%	566	53.6%

NB. Many firms will have been submitting applications under more than one case type. Therefore the totals do *not* add to the number of outlets operating in any one year.

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